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ABSTRACT

Papers presented at the fifth annual Conference of the National Center for the Study of Collective Bargaining in Higher Education are provided. The union's and management's views of the impact of fiscal crisis on collective bargaining are given in the first two papers by Robert W. Miner and Caesar Naples. The next two presentations by Robert Nielsen and Donald H. Wollett deal with the role of the faculty union in governance and the possible conflicts created. The remaining papers and authors deal with: (1) peer judgment and due process (Irwin H. Polishook and Thomas A. Shipka); (2) union and administrative roles in building support for higher education (Fred E. Crossland and Edward B. Fiske); (3) the pre-collective bargaining organization period (Robert E. Doherty); (4) compensation and academic bargaining (Robert Birnbaum, William W. Brown, and Courtenay C. Stone); and (5) recent legislative, administrative, and judicial developments (June M. Weisberger). Membership of the National Center's Faculty Advisory Committee and a list of publications from the Center are also provided. (SPG)

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COLLECTIVE BARGAINING AND THE FUTURE OF HIGHER EDUCATION

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Proceedings
Fifth Annual Conference
April 1977

AARON LEVENSTEIN, *Editor*
THEODORE H. LANG, *Director*

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National Center for the Study of
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I. INTRODUCTION

When the Fifth Annual Conference of the National Center for the Study of Collective Bargaining in Higher Education convened in New York April 25-26, 1977, to examine the topic, "Collective Bargaining and the Future of Higher Education," it was apparent that the future had already arrived and had brought with it a series of new problems under the heading, *retrenchment*.

All of the participants – speakers and audience alike – were conscious of the fact that the pall of fiscal stringency had descended on what had been one of America's leading "growth industries." The resulting tensions were bound to affect the process of campus unionization. Henceforth a budgetary Banquo will haunt the negotiating table.

Moreover, there is an awareness that public attitudes towards higher education are undergoing a revolutionary change. To a certain extent this is a reflection of the extensive criticisms that have been made of education in general. It may be due to the hubris of educators themselves who promised more than any human institution could possibly fulfill by itself. Certainly in higher education there has been a rising chorus of denunciation aimed at course content, faculty competence, university absorption in research, off-campus activities allegedly carried out to the neglect of student needs, etc.

No one concerned with any branch of education can afford to approach its problems at this time without giving heed to the warning of the late Robert M. Hutchins, formerly president of the University of Chicago and president of the Center for the Study of Democratic Institutions:

> The great campaign against the American public school has now reached the stage of overkill. It is impossible to believe that anything new can be added to the attacks already delivered, for the schools have been assailed from every conceivable direction, with every conceivable motive. The coalition against them is such as to suggest that the one thing on which our people have reached unanimity is the evils of our public system of education. The coalition is a strange one, because the critics would not agree with, or even speak to, one another on any other subject. Softhearted revolutionaries and hardheaded businessmen join in arguing that the public schools should be abolished. A critic is now regarded as moderate if he proposes merely that the system should be instantly, drastically, and thoroughly reformed. Everybody wants to have education available. Everybody wants it paid for by taxes. But nobody has a kind word for the institution that was only the other day the foundation of our freedom, the guarantee of our future, the cause of our prosperity and power, the bastion of our security, the bright and shining beacon that was the source of our enlightenment, the public school.

What Hutchins says about our elementary and secondary schools applies *a fortiori* to higher education, public and private. Obviously, both university managements and faculty associations or unions, though they may not abate their differences, confront a new and even more uncertain future as they attempt to carry out their traditional mission.

To allow for a full discussion of the direction in which collective bargaining in higher education was heading, the National Center asked partisans of administration and of faculty organizations, together with neutral scholars, to examine the topic, "Collective Bargaining and the Future of Higher Education." The sessions were structured as follows:

Monday, April 25, 1977

10:00 *Welcome*
Bernard Mintz, Acting President, Baruch College

10:30 Impact of Fiscal Crisis on Collective Bargaining in Higher Education
Robert W. Miner, Director of Higher Education, NEA

Caesar Naples, Chief Labor Relations Negotiator for SUS, Tallahassee, Florida

Moderator: Neil S. Bucklew, Provost, Ohio University

12:00 Role of Faculty Unions in Governance for Quality Education

Robert Nielsen, Director, Colleges and Universities Dept., AFT

Donald H. Wollett, Director, NYS Office of Employee Relations

Moderator: David Newton, Vice Chancellor, Long Island University

2:15 Small Group Sessions (I)

Group A: Legislation, Administrative and Judicial Review

June M. Weisberger, University of Wisconsin Law School

Moderator: Aaron Levenstein, Chairperson, Baruch Chapter, PSC, AFT

Group B: The Pre-Collective Bargaining Organizational Period: Options Available to Administration? to Faculty?

Robert E. Doherty, Associate Dean, School of Industrial and Labor Relations, Cornell University

Moderator: Marilyn Magner, Dean for Faculty and Staff Relations, CUNY

Group C: Impact of Fiscal Crisis on Collective Bargaining in Higher Education

Moderator: Samuel Ranhand, Dept. of Management, Baruch College, and Arbitrator

Group D1: Role of Faculty Unions in Governance for Quality Education

Moderator: Julius Manson, Dept. of Management, Baruch College, and Arbitrator

Group D2: Role of Faculty Unions in Governance for Quality Education

Moderator: Gerald Leinwand, President Designate, Oregon College of Education, Monmouth, Oregon

Group E: Determinants of Collective Bargaining Activity in Higher Education: Is Institutional Prestige the Key Variable?

Margaret K. Chandler, Graduate School of Business, Columbia University (with Daniel J. Julius of Teacher's College)

Moderator: C. Mansel Keene, Member, National Advisory Committee of the Center

3:45 Peer Judgment and Due Process

Irwin Polishook, President, Professional Staff Congress, CUNY (Dept. of History, Lehman College)

Tom Shipka, Dept. of Philosophy, Youngstown State College (Past President NEA Higher Education Council)

Moderator: Woodley B. Osborne, Director Collective Bargaining, AAUP

Tuesday, April 26, 1977

9:00 Small Group Sessions (II)

Group F1: Peer Judgment and Due Process

Moderator: Tom Mannix, Assistant to President, Collective Bargaining and Contract Admin., Western Michigan University

10:30 Small Group Sessions (III)

Group F2: Peer Judgment and Due Process

Moderator: Aaron Levenstein, Chairperson, Baruch Chapter, PSC AFT

12:00 Union and Administration Roles in Building Public Support for Higher Education

Fred E. Crossland, Program Officer (Higher Education), Ford Foundation

Edward B. Fiske, Education Editor, The New York Times

Moderator: Robert J. Kibbee, Chancellor, City University of New York

2:15 Has Collective Bargaining Increased Faculty Compensation?

Robert Birnbaum, Chancellor, University of Wisconsin-Oshkosh

Courtenay C. Stone, Dept. of Economics, Cal. State Univ.-Northridge

Moderator: Maryse Eymonerie, Associate Secretary and Survey Director, AAUP

3:30 Summation

Theodore H. Lang, Director, NCSCBHE

The Backdrop

The conference took place after a year of considerable activity on the organizing front and in contract negotiations. Joseph W. Garbarino and John Lawler, writing in the National Center's *Newsletter* (January-February 1977), reported that "at the end of 1976 there were 450 institutions engaged in collective bargaining with about 117,000 faculty and other professionals." In 1976 alone, some 15,000 faculty members joined the collective bargaining scene. According to Garbarino and Lawler, this is "the highest number since 1971 and the third largest number since faculty unionization began in the early 1960s."

At this time, data are lacking to establish whether the recession in higher education is stimulating or discouraging faculty organization. But there is general agreement that collective bargaining, having once arrived on campus, is here to stay.

The Role of the Center

In any case, it remains imperative that a center of research on this subject matter be maintained. Traditionally, it is expected that university study centers will serve as objective repositories of the knowledge needed by partisan practitioners. It might well be questioned whether the Academy is capable of self-study with the same objectivity as it brings to an examination of other societal problems. The National Center, which was founded in 1972 at Baruch College, City University of New York, has sought to remain above the battle despite the fact that its staff, consisting of faculty members, are not untouched by the winds of controversy that attend the issues of collective bargaining in higher education. The whole-hearted support received from both university administrations and from variously affiliated faculty organizations attests to the scrupulous impartiality with which the directors of the National Center have steered its course.

The Center operates on the assumption that the common good is best served if the practitioners of collective bargaining, regardless of where they sit at the bargaining table, are well informed and properly equipped with the skills of negotiation. To achieve that result, the Center engages in year-round activities that include the following:

- The two-day Annual Conference, with publication of the *Proceedings*.
- The National Center Newsletter – published five times a year, providing analysis of current trends; news developments; major decisions of courts and regulatory bodies; up-dates on contracts, bargaining agents, and publications.
- Bibliographies – listing author, title and subject, covering such topics as arbitration awards, court cases, NLRB decisions, state public employment board decisions, affirmative action, student involvements, and bargaining developments affecting college employees other than faculty personnel.
- Monographs – exploring current bargaining problems and new trends in depth.

- Regional workshops – utilizing hands-on format in negotiation, grievance handling and arbitration; contract bargaining and administration.
- Maintenance of the Elias Lieberman Higher Education Contract Library – containing more than 250 college and university collective bargaining agreements.

Acknowledgments

These *Proceedings* are obviously the work of a team. Thanks go, of course, to the speakers who spent much time in preparing their papers, and to the members of the audience who were responsible for additional insights as a result of their questions and comments from the floor.

Much of the success of the Conference was due to the planning done by the Baruch Faculty Advisory Committee, whose names appear on page 102. Their perceptiveness in staking out the areas to be examined and their suggestions for speakers account for the intellectual quality of the sessions.

The National Center's secretarial and administrative staff have already received expressions of thanks from the participants for the efficiency with which a host of tasks – e.g., registration, assignments to groups, meeting room arrangements – were handled. Molly Garfin, the Center's librarian, and Vanchai Ariyabuddiphongs, research associate, played an invaluable role in the preparation of materials distributed to the conferees.

Special recognition is warranted for the individuals who made possible the publication of these *Proceedings:* Lawrence Arnot of the Baruch Audio-Visual Department; Robert Seaver, of the College Relations Department; and especially Mrs. Ruby Hill, who transcribed tapes and handled manuscript. Above all, the conferees owe a major debt to Mrs. Evan G. Mitchell, Executive Assistant to the Director and Production Director of its publications, who coordinated all activities before, during and after the Conference.

–A.L.

II. IMPACT OF FISCAL CRISIS ON COLLECTIVE BARGAINING IN HIGHER EDUCATION

Robert W. Miner

Director of Higher Education, National Education Association

The linkage between collective bargaining and the future of higher education in the theme of this conference is both timely and appropriate. Predictably, more higher education faculties than ever before are either being pushed or pulled at a stumbling gait into the arena of bargaining. Not all are totally committed to the process and not all, at first, are comfortable with it. While facts and figures can be engineered to support virtually any case one chooses, my personal contacts with those who have chosen collective bargaining persuades me that it is generally accepted by those involved. Furthermore, it is widely appreciated by them as a realistic mechanism for attaining shared governance authority in colleges and universities. Most faculties in bargaining units with whom I have had contact walk a little taller, are more secure, have better attitudes about their input into the policies of their institution, and have a greater appreciation for the interests of their colleagues.

Indeed, I see the future of faculties in our colleges and universities, and that of higher education itself, being inexorably linked with the collective bargaining process. Other systems of governance in higher education have been tried and have failed. Unilateral, paternalistic, sometimes tyrannical patterns of control, wherein one or a few dominate institutional policy and, therefore, the destiny of their faculties, have become unacceptable. Collective bargaining is being recognized as the only effective alternative.

The Status of Bargaining

Despite this recognition, there are many reasons why the higher education community has not enthusiastically and spontaneously embraced the process. Among them is the attitude that collective bargaining is not an entirely savory or appropriate process. There is, of course, also the fact that many states have no statutory protection for collective bargaining among those who are publicly employed. In the latter case, there is simply no doubt in my mind that thousands of teachers and post secondary faculties are going to be denied the basic right to collective bargaining unless a federal law is enacted. I am equally certain that Congress will in the near future pass such a law.

Regarding faculty attitudes, we have already begun to observe significant change. As the economic screw tightens, faculties are beginning to recognize the benefits of collectively bargained contracts and representation by potent organizations. Somehow our process becomes less "unprofessional" as it is shown to achieve superior personnel policies and to release tight dollars for economic improvement that would otherwise be unavailable to faculties.

Even if the general economic outlook improves, the movement toward collective bargaining in higher education will continue because the lessons we are learning in a restricted economy – coupled with declining enrollments and an

over-abundance of aspiring educators – will be well remembered. And this brings me back now to the specific topic – The impact of *fiscal crisis on collective bargaining in higher education.*

Effect on Organization

I have already referred to the fact that the fiscal crisis has caused many faculty in public colleges and universities to take a closer, less jaundiced look at collective bargaining. The same appears to be true for those employed in private educational institutions, who of course, have for several years had legal access to the process. As a result, my organization, and I suspect the other two as well, have increasingly been called upon to deploy resources to organizing higher education bargaining units and then to servicing them.

This by-product of the fiscal crisis has caused an adjustment in our organizational priorities. As regards past priorities it would be wrong to assume that the NEA, or the Federation, has only recently mounted an organizing drive on faculties. NEA, at least, has had an abiding concern for our colleagues in the higher education community over a period of many years. With faculties voicing a need for greater control over their professional destinies, we have naturally developed a higher level of responsiveness with a resultant reordering of priorities to meet the emerging challenge. NEA is already allocating very substantial levels of resources to the organizing and servicing of higher education faculties. My prognosis for the future is that significantly increasing levels of commitment will be directed to this segment of NEA's total effort.

Beyond the broad configuration of organizational priorities there appears to have been rather considerable change in the behavior of our bargaining units as a result of general economic conditions. It should be pointed out that such shifts, if indeed they have occurred, have not been the product of any national policy; nor to the best of my knowledge have they been a function of official actions of any of our state affiliates. Whatever shifts have occurred are purely the result of local or regional conditions in the form of practical postures perceived at the bargaining table.

The NEA and its state affiliates, the United Teaching Profession if you will, continue in the conviction that collective bargaining rights should be extended to all teachers and by "all teachers" we mean to all post-secondary faculties as well. These rights, we insist, must be guaranteed by statute. Every educator is entitled to a decent wage and an adequate fringe benefit package. Further, each faculty member is entitled to know that his human, professional and academic rights are protected through due process.

Economic and Collegial Issues

I have never personally been persuaded that the primary motivation for faculties to organize was monetary. I would not be shocked if that were proven to be true, but I do not believe such to be the case. In my opinion, based on a good bit of contact with bargaining unit facilities, I am convinced that they have always been concerned about insuring a higher degree of reasonableness and equity in their employment relationship with their institution quite aside from salary.

Through organizing for collective bargaining, they saw the potential for translating the myth of bilateral decision making, sometimes referred to as collegiality, into reality. Salaries paid have always been an important element in the bargaining package, but I doubt that they can be used to explain the rapid expansion of faculty unionism. That having been said, I am willing to venture that at this juncture the focus of attention among bargainable issues is on things other than salaries.

These other items include grievance procedures, retrenchment and retention policies, promotion and tenure. Job security has, without any doubt, become a justifiable preoccupation of faculties. Whether the fears that seem to be reflected by this fact are real or imagined is variable depending to a large extent on the health of the economy in that region of the country, the enrollment picture, the quality of the governance and management of the particular institution, and the formula for financing the institution's program.

Job Security – A New Problem

The growing concern for issues of job security is for education in general a relatively new piece of business. Not since the great depression have schools and colleges been faced with declining employment conditions. Obviously, there are many ominous prospects that generate anxieties. The decline in birth rate has produced a decreasing enrollment which has swept through the elementary, then the secondary and now the higher education levels. The cost of institutional operations has increased as a result of inflation while there has been little in the way of a corresponding increase in revenues from any source.

There is a definite propensity on the part of the public as the fiscal noose tightens, to insist upon gaining tax relief by reducing public expenditures without any reduction in public services. Further, there seems to be a definite inclination among political figures to respond to this citizen revolt by sacking public employees first without looking to less painful areas of reduction.

Naturally, public officials approach the problem in these terms in order to demonstrate their "grave concern" for relieving the tax burden. In recent months, several states have moved to consolidate higher education institutions under fewer government agencies. Whether this is prudent or not, and whether it will in practice have a negative impact on personnel, remains to be seen. In any case, such proposals have served to heighten faculty anxieties.

Retrenchment Prerogatives

As a response to these deep concerns for job security, managements are digging in their heels in an effort to preserve total control over any retrenchment procedures and are proclaiming them to be their exclusive prerogative. Naturally, inflationary pressures and economic instabilities have made salary increases more difficult to secure through bargaining.

While management may be gaining new sophistication in bargaining, and may be increasingly more aware of the importance of job security provisions, on the other hand there is no perceptible decrease in faculty demands either for salary increases or for adequate job security clauses. In view of this the surprising thing is that there has been no increase in strike activity among faculties. Whatever

increases in the volume of mediations and fact-findings that may have occurred cannot directly be attributed to the stiffening postures resulting from the fiscal crisis.

I strongly oppose the position that retrenchment and lay-offs are sacrosanct prerogatives of management. I doubt that many managers, in fact, entertain such quaint notions. Retrenchment, retention, lay-off and rehiring policies are absolutely legitimate organizational concerns both as regards bargaining and contract enforcement. These issues clearly mandate vigorous pursuit by any responsible faculty union.

Union Response

Ideally, the union's position should be to seek a contract that prevents lay-offs altogether. This position is completely supportable in that much of the education community remains convinced that we are confronted with a market for faculties characterized by gross underutilization of available resources, rather than one which reflects an oversupply. Many are also convinced that "financial exigencies" resulting in faculty lay-offs are too superficially invoked, with other cost-saving measures being overlooked.

Studies recently done by the faculty at the California State University at Long Beach, for example, show that over the last five years there has been a growth of 53 percent in administrative personnel and a decline of 9.6 percent in faculty. These findings unfortunately have become all too typical.

The contention of many faculties is that the "explosion of managers and supervisors" has thrown an inordinate burden on static or declining resources. Experience, however, convinces faculties that cost reductions will seldom be sought, in the first instance, among the bureaucratic layers of this inverted pyramid. The figures also do not tend to indicate that savings will come from other less critical budget areas such as maintenance, administration and capital funds. Financial priorities need to be reordered back to the instructional function.

There is additional concern by faculties over the rapid expansion of the practice of using part-timers. This part-time personnel is outside the collective contract and the bargaining unit. They pose many threatening problems for full-time faculty – not the least of which relates to lay-offs. Cost-cutting ought never to involve sweatshop hirings of those who are underutilized, underqualified, underpaid, or underprotected and no full-time faculty member should be laid off until all part-timers have been removed, unless they are part of the bargaining unit.

Reality dictates that bargaining a provision which will totally preclude lay-offs is most improbable. Such a condition must be faced pragmatically with efforts being addressed to securing contract language which strictly limits the authority of the administration to reduce faculty under certain carefully designated circumstances. The bargaining unit, supported by its parent union, must do everything within its power to restrict reductions in force to situations wherein the institution is unable *in any manner* to meet the salary costs of the present faculty. Carefully drawn-up procedures should be incorporated into the contract

and the procedures should maximize requirements for management to keep the union informed and involved whenever retrenchments are being considered.

Tactical Matters

The national unions and their state affiliates can be particularly valuable in helping local bargaining units to secure the best possible contract provisions – particularly on security items. Legal advice is indispensable in relation to such measures. Locals seldom have access to high quality, specialized legal service except through their state affiliate or parent national organization.

National and state associations are in a position to gather and disseminate information relative to the effectiveness of provisions in other bargaining unit contracts. NEA, for example, has 8,900 affiliates with collective bargaining contracts covering more than 1,200,000 teachers and faculty members. This breadth of background is of critical importance in negotiating contracts; especially so when it is coupled with capacity to store and retrieve vital contract information for dissemination.

Lay-offs are relatively new to us, but the ripoffs against faculties in the past have been all too prevalent. Unfortunately, we have had much experience with dismissals, terminations and demotions which do not relate to retrenchments. The record shows that we have been effective in protecting jobs for members and in precedential cases for non-members as well. Over the past two years, NEA alone has spent over $350,000 in litigation for higher education faculties, not to mention the cost of other services provided to our people involved in these suits. Some of these costs provided defense for academic or professional rights, but the majority of the cases related to dismissals.

NEA, to date, has been spared the trauma of massive lay-offs due to general retrenchments. This may be partially accounted for by the fact that we have helped our locals to bargain good contract language or it may be due to the fact that we have the resources and the clout to keep management honest to the point where they have chosen to avoid the battles that would certainly ensue if they implemented lay-off procedures. I suspect, however, that the lack of lay-off occurrences is conditioned more by the fact that NEA does not presently hold bargaining rights in the areas of the country most affected by economic conditions conducive to faculty lay-offs. In those areas I must conclude that the unions representing the afflicted faculties have not been particularly effective in protecting faculty members' jobs. I pass no judgment on this performance and I am in no way attempting to be critical. I simply state this as my assessment.

The Legal Situation

There is a statutory framework which relates to issues of retrenchment and lay-offs. It is defective in numerous important respects and it would be a serious misconception on the part of faculties to assume that their security and rights are guaranteed under such laws.

State tenure laws and employment statutes, as well as the Federal Constitution provide limited protection to teachers and faculties. It must be clearly understood that no existing law – state or federal – contains adequate protection against the loss of faculty positions through lay-offs.

The collective bargaining contract is better able to provide teachers with protection against lay-offs than is a state tenure law or the Federal Constitution. Arbitration through a collective bargaining contract is a better mechanism for unions to challenge the implementation of a lay-off than is a court action to enforce the state tenure law or redress the deprivation of being out of work.

The Challenge of Uncertainty

In summary, an economy in a state of instability presents new and crucial challenges to a faculty union. Opportunities will be thrust on the organization to achieve its "finest hour" but to do so it must remain healthy, vibrant, responsive and flexible enough to mobilize resources to fulfill the changing needs of its members.

In many ways the security of members is inexorably linked to the security of its union or association in times of economic turmoil. When member demands mount, unions are put on trial – they must produce or incur injury which may be irreparable. Cozy inside deals with management, which may have sustained unions politically in the past, cannot be honored in the throes of a fiscal crisis and it will be the members who ultimately are the victims. The comfort level of a labor organization is a function of how stable the economy is; its burden of responsibility increases in proportion to the amount of instability. Certainly, in trying times the union must perform at the very limit of effectiveness.

A responsible employee representative will see during a fiscal crisis its obligation to press with increasing vigor for contractually guaranteed rights and benefits for its members. The organization that deserves to represent its members in today's setting will be one that can effectively operate on their behalf on multiple fronts. It needs to have not only an advocate field operation and an organizing program, but a well-developed legislative and political action program, a system for fighting challenges to members' rights and academic freedom and a competent research and legal services system that is capable of supporting the general effort to advance members' interests.

In difficult economic times, more is expected of employee organizations and more must be provided. Meeting the legitimate needs of members should not be just *an* organizational objective; it must be the *only* objective.

III. THE IMPACT OF FISCAL CRISIS — A MANAGEMENT VIEW

Caeser J. Naples

Chief Labor Relations Negotiator, SUS, Tallahassee, Florida

For a practitioner of the arcane arts of collective bargaining to ascertain the impact of the fiscal crisis on his trade is to be like the bedouin taking his first camel ride in the dark. He knows something is there, he can feel the scruffy fur, smell the pungent odor, and he is certainly conscious of the bumpy ride. But he is likely to miss a few salient points if he tries to describe his unusual vehicle.

Nevertheless, this part of the program is given over to the practitioners not the scholars or students. You want the view from the trenches, not from Olympus and you asked for the monocular vision of the advocate; and you are secure in your faith in the adversary process that by providing equal time to a distinguished union spokesman, the truth will emerge somewhere in between. Undeterred, then, by the claim of some that the collegial – rather than the adversary process – is a better vehicle for ascertaining the truth, let us proceed.

Bargaining Priorities

It is difficult to determine with any degree of precision whether the fiscal crisis has caused a change in the priorities of the parties because faculty collective bargaining is itself a result, in large measure, of the fiscal crisis. Sensing or anticipating the monetary problems besetting our institutions of higher education, many faculties turn to collective, legalistic adversary action to meet the crisis.

This is also a search for protection from another aspect of the crisis, i.e., efforts – in public institutions – by state legislatures and governors to make those institutions more responsive to public policy and, in their view, more responsible in the expenditure of public resources. While these efforts may be perceived as threats to institutional autonomy and governance, their legality cannot be denied. Consequently, fire is fought with fire, and equally legalistic measures are resorted to. Internal machinery may seem powerless to cope with these "outside" pressures, so external forces–unions–are introduced. Unionism, itself, therefore represents a change in priorities from collegial to adversary and from internal to external.

Further, while the reason for the initial resort to faculty unions is often to find ways to cope with the fiscal crisis, unions themselves tend to subvert that purpose. While there is probably no question that most new unions sincerely seek to satisfy the initial concerns which gave them birth, they quickly (and correctly) realize that they can better serve their faculty constituency by becoming strong over a period of time and by changing from few- to multi-issue organizations. Therefore, as bargaining for the initial contract progresses, compromises in the issues of original concern are made in trade for concessions to strengthen the organization. It is difficult, therefore, to see evidence of the

original priorities in the initial contracts since they tend to look pretty much alike.

Finally, most faculty unionization has taken place in the last five years. The fiscal crisis in higher education has surfaced during roughly the same period. This makes it especially difficult to determine what pre-crisis priorities were.

Wages, Fringes, Job Security, Etc.

It is axiomatic that higher wages and better fringe benefits do one no good if one loses his job. It is equally aphoristic that you can't get blood from a stone; and any institution in such fiscal straits that it is considering abolishing jobs is unlikely to have funds for significant improvements in wages.

However, any responsible union negotiating a contract in the '70s must address itself to the question of the job security of its constituents. This issue is of primary importance—and ranks with a grievance and arbitration procedure, use of the campus mails, and time off for union business as top priorities for unions.

How Effective are Unions in Protecting Faculty Members' Jobs?

In the state of New York, organized labor is regarded as a strong, effective and influential force in governmental decision-making. Labor unions enjoy a public support and respect here that is the envy of their brothers and sisters in the South. The first CUNY-AFT and Legislative Conference Agreements were watershed events in the development of faculty collective bargaining. The collectively bargained agreements covering the faculty at CUNY and SUNY have been in effect for all of this decade. Yet, at CUNY over 2,900 instructional positions have been cut, according to the *Chronicle of Higher Education* (September 27, 1976). At SUNY, the *Chronicle* (October 11, 1976) noted that 1,500 professional staff positions were lost including over 400 faculty positions. As another example, the September 29, 1975 *Chronicle* noted that 516 professional positions were being eliminated in the fully unionized Pennsylvania State College System.

It is possible to conclude that unions, at bottom, may not have been all that effective—and, in fact, may have been somewhat counterproductive in protecting jobs of its constituents.

Management Prerogatives in Layoffs

Collective bargaining has, I believe, resulted in a realization by management of its full authority in controlling the staffing patterns of colleges and universities. Further, in response to union advocacy, management is very often less reluctant to exercise its newly recognized authority.

In the pre-crisis days, there was never any real dispute at the bargaining table over management's ability to lay off employees for lack of work. Virtually any management negotiator who wanted it could get union agreement on such a statement in the management rights or reserved rights clause. Usually this was followed by a concession that management had the right to determine the mission of the institution, including the nature of services to be offered, along with the types and numbers of personnel to be employed.

This litany of powers that meant that management was recognized to have the unilateral right to determine which functions and which employees to discontinue never received serious thought since the last layoffs had occurred prior to the time most negotiators entered the labor market. In the minds of those at the table, I'm sure, there was no apparent danger in agreeing to a clause that would never be used.

When unions resisted—on those rare occasions—and refused to agree that management had the right to lay off for lack of work, labor boards determined that this was a managerial prerogative and not a mandatory subject of bargaining that the union could hold out for.

While the legal cards may appear stacked against a union seeking to prevent layoffs, the matter clearly doesn't stop there. Unions seek to negotiate what is left in the area of layoffs: order of layoff, appeal rights, termination pay and recall rights, i.e., the impact of management's decision to lay off on terms and conditions of employment. In doing so, however, unions have made management aware of its rights. While management negotiates the impact of lay-offs, it has the opportunity to review and rewrite its procedures in the areas left to its unilateral authority.

Effect of the Adversary Mode

One of the unanticipated results of collective bargaining by faculty is the ceding to management—often for the first time by faculty—of the implicit right to say "no".[1]* Additionally, by adopting the adversary mode itself, the union has freed management from the obligation to act collegially or paternalistically. Since the union is now—by self-proclamation and by law—the protector and defender of faculty rights, management is free to act only in its own interests.

While later discussion will touch upon some more positive impact of the union of job security, this observer is not all that certain that faculty have it better under collective bargaining than they did under the historical collegial relationship. I am reminded of an incident that occurred in a suburban school district in which I lived. This relatively affluent system had 165 teachers whose union consistently found itself at vocal odds with the administration. Finally, at one school board meeting—coming at the conclusion of a particularly heated bargaining session—the president of the teachers' union presented the board with a petition demanding that the superintendent be fired. The petition bore the signature of each of the 165 teachers in the system who were not, by the way, all members of the union.

After a quick glance through the document, the board president carefully and deliberately proceeded to tear the petition into small pieces.

"Management does not attempt to determine the leadership of the teachers' union," he said. "Please stay out of our leadership matters."

Trade-Offs and Lay-Offs

I'm sure that 10 years ago or so, such a petition signed by all the teachers in the system would have been swiftly followed by a resignation or a request for

*Footnotes for this paper appear on page 23.

one. Collective bargaining has clearly, in my opinion, been a process where the faculty has given up some rights in exchange for others.

While I would not deny that there may be advantages to faculty collective bargaining in some respects, I'm not at all sure those advantages pertain to the area of employee layoff protection. I'm fully aware of the counter argument that the "right" I have described in this anecdote is voluntary, not protected by a legal document, and could be withdrawn at any time, and that collective bargaining may trade ephemeral rights for permanent, legally enforceable ones. This misses the point. It is not what the *actual* legal rights are that governs the day-to-day relations of the parties, but what the *perception* of those rights are. Further, and more to the point, it is those rights which the parties *choose* to exercise that are important. The collective bargaining relationship, in this and many other regards, is like a marriage. The *de facto* rights of the parties are more important than the legal ones. In this regard, the loss of rights I describe may be significant.

The process of contract administration further adds to management's assertiveness in this area. Every fledgling contract administrator learns early in his career that rights not exercised are soon lost. Whether motivated by fear of waiving its rights or some other factor, a management faced with the requirement to cut expenses, is now more likely to lay off employees to permit the enterprise to continue normally but in a reduced scope than to retain all employees but enforce economies that will impact on them all. As the saying goes; better to have fewer, satisfied employees on the job than to have more employees working while they all are unhappy.

Administrations who fight for and "win" concessions in the area of layoff—such as the unilateral ability to determine which functions will be discontinued—are probably less likely to turn that determination over to a faculty senate committee. One of the more common areas for involvement of faculty through committees prior to collective bargaining has been the determination of curriculum and admissions. The former represents an effective, direct determination of what functions the enterprise would perform. This, in effect, determines which employees will be hired and retained and which will be let go in the event of program curtailment. Admissions policy, likewise, has an indirect effect upon those considerations since it determines whether there will be a market for certain functions.

The right to determine which function may be discontinued may be a management right under a collectively bargained contract; nevertheless, the right may properly be shared with the faculty through a curriculum or other kind of faculty committee. It takes, I would venture, a generous and visionary administration to share such a hard-won right voluntarily with the faculty. (I would add parenthetically that such voluntary involvement of faculty *qua* faculty in the exercise of "management rights" may make it easier to win those rights at the table next time and, meanwhile, the decisions are likely to be more acceptable to the faculty!)

Effect of Contractual Provisions

I do not believe we can judge the effectiveness of unions in the area of

protecting faculty members' jobs merely by counting the number of layoff clauses in collectively bargained agreements. As we have seen benefits inuring to laid off employees are a mandatory subject of bargaining; any union worth its salt can properly demand that the collective bargaining contract touch upon this area. Rather, it is the substance of these clauses that is important and whether, in their application, faculty gain greater rights than before.

It is possible to argue that the existence of *no* contractual provision may provide an employee with greater appeal rights and more pervasive review of the judgments made than most contract clauses. If the contract cedes to management the right to decide which functions to eliminate, the union may have waived the rights of individual employees to challenge that decision.

Certainly some courts have adopted this waiver theory when employees covered by a contract sued to avoid contractual limitations on the scope of arbitral authority.[2] This theory is that collective bargaining consists of a number of trade-offs. With the union acting for each member of the bargaining unit, it may forego some rights in an effort to obtain others. Since collective bargaining laws are seen by the courts to represent a strong public policy, the courts make every effort to guarantee each party the full benefit of its bargain. This is true even if an individual's rights must be sacrified to the changed rights of the group.

In the absence of any contract clause, the waiver theory would not be a bar to argument that the administration must provide due process, equal protection of law or must refrain from abritrary and capricious conduct in the selection of functions to discontinue and in the identification of the employees to be laid off. Under a collective bargaining contract, the courts seek to restrict themselves to enforcing its provisions.

The Pre-Bargaining Tradition

It is probably unfair but nevertheless instructive to judge the effectiveness of a union in protecting employees' jobs by comparing the contractual layoff provisions with the AAUP statements on Academic Freedom and Tenure and its other related statements.

For most of this century, NEA was a professional association which sought to represent everyone connected with elementary and secondary education–from school board members and superintendents to classroom teachers. The AFT, for the most part, was fighting the sobriquet of unprofessionalism (remember those days?). Meanwhile, the AAUP was slugging it out in the trenches, so to speak, for academic freedom. It set high–if somewhat imprecise–standards for faculty involvement and, generally, it was successful in obtaining acceptance of its statements. When describing the faculty's rights in institutional decision-making, it often spoke in vague (and therefore perhaps, more acceptable) terms, e.g., faculty should plan a *primary* role or a *significant* role. . . .

While it was never clear precisely what this meant in any applied sense, like a Delphic prophecy all who read it could attach a personally acceptable meaning to it.

The AAUP standards spoke of "financial exigency" as the only justification for faculty layoffs. Courts have attached various meanings to that term and have gone to extreme lengths to force institutions to divest themeselves of resources

and property in an effort to avoid laying off tenured faculty. It's possible to argue that the job security inherent in this definition of tenure transcended the existence of any program or curriculum and could continue to exist so long as the college had property it could liquidate to support the employees.

With collective bargaining this has, for the most part, changed. Contract negotiation brings with it precision and predictability. An agreement may describe in sensuous detail the elements and steps of the decision-making process so all may know who may do what and to whom. It also quite likely spells out management's rights. Collective bargaining provides prosaic predictability and uniformity while not permitting the occasional flights of fancy courts may indulge in when interpreting oracular ambiguities. I would imagine few golf courses are sold under most collective bargaining contracts.

Union Involvement in Layoff Policies

Should faculty unions be involved in layoff and rehiring policies?

Many aspects of layoff and rehiring have been determined by the courts and boards to be mandatorily negotiable, e.g., order of layoff, reemployment rights, notice, termination pay, recall, etc. The rest have been left to management.

It has been my experience that faculty unions are most comfortable enforcing the rules or challenging a management action thereunder. But they tend to avoid making decisions for fear of favoring one group of faculty over another; it would be out of character and especially uncomfortable for unions to determine who should be laid off. And, I suspect they would shun that role. Finally there might exist a conflict of interest when the union refused to process a grievance challenging a decision in which it had a hand.

Typical Contract Clauses

Fortunately, for the sake of the law, the AAUP test of financial exigency has not found its way into most agreements. Not only do we not know what it means, it is as we have seen probably tantamount to declaring bankruptcy when all you intend to do is drop a section of Business Togalog. A public declaration of this type for a private school could have severe and unnecessary consequences.

The typical lay-off clauses describe the order of layoff, provide for advance notice or payment therefor, describe efforts at placement within the institution and extend recall rights to vacancies or recreated positions. The earliest clauses usually are straight seniority clauses – Last In, First Out – with probationary employees going before those with tenure.

As the parties began to implement these provisions, it became apparent that a simple seniority provision could rapidly wipe out an institution's affirmative action program. Consequently, exceptions to seniority began to appear. For example a faculty contract at Southeastern Massachusetts University provided that newly hired female and minority employees would be placed on a separate seniority list and that layoffs would be shared between that group and the earlier-hired majority.

Other agreements, such as the Florida SUS agreement, provide specific exception from the application of the specified order (non-tenured, then tenured – no

seniority, by the way) when an affirmative action program would be adversely affected in the judgment of the administration. We can expect to see more such exceptions as the parties become aware of the impact of seniority on minority hiring efforts.

Bargaining Impasse

What impact has there been, if any, on the incidence of impasse?

I suppose the classic case involves the recently negotiated SUNY-UUP 2-year agreement. The preceding agreements provided that management would decide which function would be curtailed or which level of organization–college, department, section or individual–would comprise the lay-off unit. For example, management could determine that the Shakespeare section of the English Department would be reduced. That decision made, the most junior Shakespearean would be laid off irrespective of the fact that he was tenured and that the department's Chaucerian was untenured and junior in terms of service. The fact that the laid off Shakespearean also once taught Chaucer was irrelevant.

When SUNY underwent the recent severe layoffs, many said that the impact on program and quality was minimized by the precision with which cuts could be accomplished under such a provision. The union, however, was under severe pressure to require that departments, not smaller units, be the smallest organizational level at which layoffs could take place and further to permit "bumping." This would permit our Shakespearean to "bump" the junior Chaucerian out of a job. Bumping would proceed within the department until, presumably, the most junior person left.

The union's demand was originally rejected by management and the parties were at impasse for over 14 months. Only when management agreed to "consider" the application of bumping–albeit on a non-grievable basis–was agreement reached. Another battle is expected to take place during the renegotiation of this clause next year when the union seeks to make "bumping" mandatory and grievable.

In the Florida SUS-UFF negotiations, the layoff and recall clause was among the last to be settled. Whether it was because the parties were at an earlier stage in their development or because of the salubrious sunshine, the matter did not pose the difficulties faced by SUNY.

Conclusion

Collective bargaining does not handle all issues equally well. It is also a process of trade-offs. Faculty and their unions cannot expect that collective bargaining will guarantee an improvement in every benefit. There is substantial support for the proposition that unions are not particulary effective in preserving jobs in a period of fiscal crisis.

Collective bargaining often brings with it a new management awareness and assertiveness which could result– at least initially–in more managerial authority in many areas. Most seasoned observers view this as a necessary and even helpful

development as the parties seek to achieve parity at the bargaining table. Nowhere does this development seem clearer than in the issue of job security and layoffs as a response to fiscal crisis.

Footnotes

[1]Since every union needs to deal with a management with authority to agree, it impliedly recognizes management's authority to withhold agreement.

[2]*Donald Antinore v. State of New York et al.*, 49 A.D. 2d 6 (1975), aff'd ___(1976). See, also, *Delorenzo v. SUNY Board of Trustees et al.*, ___Misc. 2d ___(1976).

IV. ROLE OF FACULTY UNION IN GOVERNANCE

Robert Nielsen

Director, Colleges and Universities Department, American Federation of Teachers

Essentially, the question before us in this conference session, when stripped of most of the academic euphemisms which often cloud and distort such issues, is a simple one: Can professors bargain over who runs the university?

Governance Defined

Specifically, we will discuss the pros and cons of the bargainability of certain areas of faculty governance. What little mathematician that remains in me demands that we first define what we are talking about. Herein lies the rub. It would appear that there are many more definitions and interpretations of what *governance* is than there are parties to the process. Whatever it is called–faculty self-governance, governance by collegiality, shared authority, shared decision-making, etc.–it seems clear that what is ultimately involved is the matter of who has the power, authority and responsibility to determine what a "higher education" should be at a particular institution. Therefore, since governance involves a theoretical sharing of power, it is no surprise that each of the parties involved defines it in a manner which protects its own self-interest.

For example, the Board of Trustees of the Connecticut Community Colleges recently described its perceptions of self-governance in a document entitled, "Governance Relations in Higher Education and Collective Bargaining." It states: "The assignment of responsibility to conduct colleges to lay boards rather than to a body of self-governing scholars was established in America in 1636 with the founding of Harvard College. . . . While preserving its right to act in behalf of the public, the Board has delegated authority to its officers, who in turn develop policies and decisions with the *advice and counsel of* their professional colleagues. . . . The task of achieving the mission of the system has thus been characterized by an interdependent or collegial effort."

In short, the Board governs and the faculty advises. This is hardly consistent with Webster's definition of collegial as "power and authority vested equally in a number of peers." Nor does the Connecticut definition square with current or historic practice in European universities or with the aspirations of the majority of American college faculty members.

Faculty as Managers?

Our confusing topic was made even more confusing by a 1974 New York State Public Employee Relations Board (PERB) ruling which recognized that college teachers have a "policy-making function which goes by the name of collegiality," and that the "faculty must continue to manage, to be on both sides of the bargaining table." Not satisfied with leaving well enough alone, PERB went on to observe that the "faculty may be on both sides of the table, but not their union."

I want to examine this latter observation for a moment, for it suggests a notion that the *faculty* and *the faculty union* are, or should be, distinct entities. For this purpose, let us, for the moment, divorce ourselves from the words "union" and "bargaining." Yes, it is true that in some of its governance functions the faculty exercises some prerogatives which in other employment situations might be viewed as properly belonging on the management side of the table. But it is also true that the faculty has, through a variety of governing mechanisms, traditionally exercised these managerial functions both individually and collectively.

A careful analysis of the structure of most faculty governing bodies reveals an amazing similarity to the delegate assembly or executive board of a craft union. These bodies are, for the most part, elected, deliberative groups which in the minds of the faculty are charged with carrying out their obligations in a legislative fashion. Incidentally, it is worth noting that the early European universities were simply guilds of master professors. I would conjecture that most of today's faculty governing bodies are the tired, worn out, albeit venerable vestiges of that early trade union structure.

The key point in all of this is that the faculty *will* exercise its management rights and responsibilities through some *collective organization*—senate, council, union, etc.—and as a result will be on "both sides of the table" by one route or another. In the final analysis, the faculty union is simply another vehicle for expressing the individual and collective desires of the faculty. The reasons for the movement towards faculty unionization are clear: The traditional structures of self-governance and shared authority were unable to cope with the strains and stresses inherent in a modern university. On the other hand, collective bargaining is a process which was designed to resolve the very conflicts for which governance by collegiality had proven inadequate.

Now, there is nothing heretical or immoral about applying the collective bargaining machinery to an employee-employer relationship in which the definitions of these categories are as fuzzy as they are in a University. The fact that faculty members themselves are involved in hiring and firing may be self-abusive, but it is not perverse. I doubt very much if Sam Gompers, Eugene Debs or Robert Wagner, Sr., will turn in their graves because of this new application of the tools they helped shape and design. Indeed, the fact that we do negotiate governance is a testimonial to the incredible flexibility of the collective bargaining system and the great genius of those who created it.

Subject-Matter of Negotiation

Let's turn now to this crucial question: What *can* faculty bargain? Or, if we use the jargon of the labor-management specialist, it becomes: What is the scope of negotiations? Scope, as defined in the various statutes, varies from the National Labor Relations Act's classic "wage, hours and other terms and conditions of employment" to those so restrictive that, if they could be enforced, would render the whole bargaining process moot.

Next to a law prohibiting any bargaining, one of the most ludicrous ones I can think of is a recent proposal by Richard J. Sensenbrenner, Associate General Counsel of the California State University system. Writing in the Fall 1976 issue

of the *Journal of College and University Law*, Sensenbrenner suggests that "to avoid having academic employees sit at both sides of the table, as it were, or to prevent substitution of an adversary process for a collegial one, matters directly affected by the governance mechanism should be sheltered from collective bargaining by . . . exclusion from the scope of bargaining. A statutory clause to safeguard the collegial governance process from encroachment might read as follows:

> "Scope of Bargaining" means wages, hours, and other terms and conditions of employment, including any other matters agreed to by the parties as a subject of bargaining. In public institutions of higher education, terms and conditions of employment shall not include any matters of shared governance or management, including but not limited to, classification and reclassification; merit principles; direction of employees; establishment and determination of student and employee qualifications; standards for work or leave (excluding earned vacation); the nature and content of programs, curriculum and examinations; degree and course requirements; organizational structure and selection and direction of personnel for employment and leave purposes; promotion, transfer, assignment, reassignment, retention, and permanent status of employees in positions; creation, modification, or discontinuance of universities, colleges, schools or departments; functions, programs and efficiency of the institution; admissions standards; class size; grading standards; methods of instruction; student affairs and conduct; allocation of resources; standards of service of the institution; utilization of technology; determination of methods, means and personnel by which the institution's operations are to be conducted; peer evaluation; standards of professional responsibility; academic freedom standards; and academic senates and faculty councils.

Absolutely incredible! Seriously, it would be impossible to bargain over anything if such a law could be enforced. But then I'm sure that prevention of bargaining was precisely the author's intent.

I'm sorry, but if you will forgive me for one small bit of heresy, I think this whole question of wide scope vs. narrow scope is pure nonsense! For in the broader sense, the question of bargainability of a particular issue is frivolous, for if the faculty and staff organize because they want to bargain governance–or any other issue– they will find the means to do it–legislative prohibitions or administrative exhortations to the contrary. The problem I have is that while the law, perhaps by necessity, puts restrictions on the scope of negotiations, in reality scope is limited only by the imagination, ingenuity and power of the participants. Perhaps a better way of putting it would be that every issue which contributed to the organization of the faculty is bargainable, if we recognize that not all of the "bargaining" is done in the classic, across-the-table definition of bargaining.

Reasons for Unionizing

If we really want to understand what is going on with respect to campus collective bargaining and what will or will not be bargained for, then we must ask a much more basic question: What does the faculty *want* to bargain for? And this question, in turn, is probably best answered by an analysis of why faculty organize or unionize. For, while these questions are closely related, they are not identical and there are some historic points of view on the latter which can provide insights and perspectives into the question of what can be bargained.

C. Golden and H. Ruttenberg, in *The Dynamics of Industrial Democracy* (1942), argue that all workers join unions for only three reasons and they are to satisfy certain economic, psychological, or social needs and not necessarily in this order. While they were writing about industrial workers, their thesis is applicable to public employees in general as well as to college professors in particular.

First, there is little doubt that the economic plight of higher education in the 1970s has been a factor in the rapid growth of faculty unionism—the correlation of timing is simply too compelling. But, as Golden and Ruttenberg point out with respect to steelworkers, economics is probably not the primary motivation for union membership on the campuses. Before we began teaching, most of us were well aware of the fact that professoring was not a well-paid profession. Additionally, most of us became accustomed to a certain poverty level while attending graduate school.

The psychological need Golden referred to is said to be a universal, albeit usually latent, desire on the part of workers to tell the boss to go to hell. Traditionally, workers were able to satisfy this need by quitting and taking another job. Once this capacity is denied the individual through economic depression and unemployment, the only way it can be exercised is collectively, through trade unionism. Surely, this is equally valid on the modern university scene. Seldom does one get promoted any more by presenting the Dean with a job offer at another insitution at a higher rank and salary. Today, the slogan on most campuses is simply, "Improve the job you have."

Finally, it was observed that "the most compelling motives for union membership were an urge for self-expression, a desire to have a voice in the things that counted to them, an outlet for their creative drives, and the freedom of action to work out their own destiny in their own way . . . ." When these goals are translated into current campus euphemisms and traditions, they simply state that the faculty recognize that they have a much larger role to play in shaping the future of American higher education than that of a hired hand, for they desire and demand a meaningful role in the decisions that affect not only their personal futures but which will ultimately decide what higher education is to be.

Effect of Organization

Upton Sinclair, in his book, *The Goose-Step* (1922), wrote that

> . . . the all-important fact in the situation is this: anytime the college professors of America get ready to take control of their own destinies, and the intellectual life of their institutions, they can do it. There is not a college or university in the United States today which could resist the demands of its faculty 100-percent organized and meaning business.

Now it is clear what Sinclair meant by the phrase, "meaning business," and it should be equally clear that he did not intend that "100-percent organized" be synonymous with "be the collective bargaining agent." After all, in 1922 these concepts were at best foggy in the industrial sector labor movement and had not even reached the dream stage for white collar and professional employees.

No, Sinclair simply intended to convey the basic political reality that if a group of employees is 100-percent organized they can accomplish almost any

goal–independent of external constraints placed upon their efforts. The facts are, campus unions are organized around many issues, some of which are "bargainable" and others are not.

Faculty organize for a variety of reasons and around many issues. These issues may or may not be proper subjects of negotiations under the applicable labor law; nevertheless, if they are important enough in the minds of the faculty to cause them to organize, then we must consider them.

For example, I am sure that most of you have noted the correlation between the institutions which are advertising for new presidents in the *Chronicle of Higher Education* and those at which there is an active collective bargaining drive underway. Clearly, the selection of the university president is not a mandatory subject of negotiation, but it is surprising how often the major force behind an organizing drive is dissatisfaction with institutional leadership. It is also clear that a well-organized faculty can, through campus and community-based political activity and pressure, bring down a president.

"Non-Personnel" Items of Governance?

It is, I believe, wrong and misleading to isolate the collective bargaining processes from the dynamics of unionization and organization. While these are related topics, they are not identical.

It is only a very narrow, restricted, and perhaps contorted view of the organizing/unionization/collective bargaining processes which permits the segregation and isolation of the bargainability of personnel and nonpersonnel issues in any arena of labor/management relations. In higher education in particular, one can, I believe, validly argue that there are no "nonpersonnel" items of faculty governance.

For example, the outline provided to me for this session suggested that curriculum design is a nonpersonnel matter of governance. Nonsense! If a change in the freshman English requirement results in the firing or hiring of professors of English, it is *ipso facto* a personnel matter. It was further suggested that the establishment and maintenance of standards of excellence in teaching and learning were somehow to be considered nonpersonnel aspects of faculty governance. More nonsense! Would anyone want to seriously argue that the peer evaluation/promotion/tenure processes are not intrinsically related to the "establishment and maintenance" of such standards? Clearly, these are matters both of governance and personnel policy and to arbitrarily separate them is a failure to understand both the university and its multiple functions as well as the history, fundamentals, and functioning of the collective bargaining processes.

The Issue Re-Defined

Now, if the question is whether, in particular areas of governance, certain decisions should be made by the faculty as a whole, or the faculty acting as a whole through its union, or its faculty senate and/or a combination of these two, this may be a whole different matter, or, at least, debatable.

Also, if the question is whether these areas of governance should be determined administratively or managerially, it is yet another question. However,

these alternative queries relate more closely to the relationships between faculty and the university than they do to the relationships between faculty, union and collective bargaining agent. The threshold question here is an old one: What is and who is *the university*?

Most faculty unions have been organized because a particular faculty perceived that it had somehow been cheated out of its rightful role in the governance of the institution. Cheated by an administrative bureaucracy, by state and city politicians and all too frequently by their apathetic colleagues who had abrogated many of their faculty rights and responsibilities. If the effort is successful in frustrating this desire of the faculty to participate fully in institutional governance through the bargaining process, then this desire will have to be satisfied through some alternative and probably less productive avenues. And what other avenues are left that haven't already proved inadequate? I think few!

Finally, I would observe that if the faculty voice is neither heard nor heeded through legitimate problem-solving procedures, such as collective bargaining, it will be vented through another traditional route: the ad hoc, single-issue oriented, internal, political campus upheaval. One need not be a campus employee very long to appreciate that intra-faculty or faculty/administrative politics are among the most vicious and self-destructive in existence. All of us have seen departments, divisions, colleges–indeed, whole institutions–literally torn apart because there was no effective method of resolving a relatively simple personnel problem. Clearly, of all the alternatives before us, this is the least desirable. It serves absolutely no one–union, faculty, or students.

V. COLLECTIVE BARGAINING AND GOVERNANCE SYSTEMS IN CONFLICT

Donald H. Wollett

Director of Employee Relations, New York State

The Function of Institutional Management

Management has the responsibility and authority for operational decision-making in the first instance.

At the top level is the college or university governing board. Among the subjects concerning which it makes decisions are:

A. *Those that relate to the mission of the institution*: Is it a teaching operation? Research? Are there professional schools? Graduate schools? What is the area of subject-matter emphasis–social sciences, humanities, health sciences, physical sciences?

B. *Admissions Policies*: Tuition and fees, standards for entrance.

C. *Degree Requirements.*

D. *Allocation of Funds*: How much money is to go into capital investment–libraries or stadiums? How much into the operational budget: material or personnel? With respect to the latter, how much support personnel as distinguished from academic personnel? What staffing mix and staffing numbers? What percentage should receive job security, *i.e.*, tenure? What percentage should remain in a probationary or term-employment status? What is the level of fringe benefits? Of salaries? What formulae for distribution of salary increases? What macro-programmatic decisions–expansion or retrenchment?

These are policy matters within the primary responsibility and authority of the governing board.

The next level of management is top administration, which has the authority and responsibility for implementing governing-board policies:

A. *Personnel administration:* appointments, promotions; incremental increases; acquisitions or denial of tenure.

B. *Micro-programmatic decisions*, e.g., particulars of the curriculum.

C. *Selection* of students.

D. *Accreditation* of graduates.

E. *Delegation of authority and responsiblity* over mini-micro-decisions to middle- and first-level management, *e.g.*, deans and department heads.

Academic management is accountable for these and other decisions to consumers, *i.e.*, students, and to all external funding sources–parents of students, taxpayers and their political representatives (in the case of public institutions), donors, foundations, and other grantors.

The Function of Trade Unionism

The typical union does not aspire to make managerial decisions. It is not interested in running the enterprise and taking the responsibility for the decisions that underlie its operation. A union's function is reactive; that is to say, it responds to and, where appropriate, challenges managerial decisions which have

an impact on the terms and conditions of employment (or, put more grandly, the work environment). As someone once put it, a union's primary purpose is to "protect the fellows."

This is not to say that unions do not have an interest in managerial decision-making. Clearly they do. For instance, in an academic setting a *decision* by management to relax admissions standards or change staffing patterns may result in an increase in class size and other components of faculty load. This *impact* of the managerial decision on the work environment is a matter of concern to the union. It is the focus of collective bargaining. Impact bargaining may result in a change in the decision; but it is the former, not the latter, that generates negotiations. The distinction between *decision* and *impact*, although it is not always easy to make, is well recognized and well accepted in labor law and labor relations practice.

A union, like management, has a constituency to whom it is accountable. A union feels at best only an indirect concern for the management constituency – consumers and income sources. Its accountability is to those employees whom it represents – who are members of the bargaining unit.

These, then, are the spheres of responsibility and authority of management and the union in a typical collective bargaining context. Note that they do not significantly overlap, although there will be matters in respect of which the delineation will be blurred.

The Function of Governance Systems

Faculties, through governance systems, aspire to make many managerial decisions. They assert the tradition of academic autonomy of the so-called community of scholars and seek a sphere of influence which overlaps that of management. In my last year at the University of California, for instance, the budget committee of the Davis campus division of the Academic Senate acted on 562 personnel matters involving appointments to the faculty, promotions, merit increases, changes of title, and tenure.

In addition to these personnel functions, the faculty – through senates and committee structures – aspire to be involved in macrocosmic decision-making concerning such matters as admission standards and practices, tuition and fees, programmatic emphasis, curricular offerings, and degree requirements.

One caveat: Governance systems are not monolithic. They range from the *faculty*-autonomy, residual administration-veto model, e.g., the University of California, to the *administration*-autonomy, faculty-manipulation model, e.g., the California State University and College System.

The assertion by faculty of managerial function is a process which tends to blur the principle of mutually exclusive spheres of management and employee legitimacy.

Decision-making by employees violates another principle of sound management, that is, the precept that those who make managerial decisions are accountable therefor to consumers and capital sources. In a governance system there is no effective mechanism whereby the faculty can be brought to account for its actions.

It is for these reasons that governance systems exist at the sufferance of academic management which "shares" its authority to manage but reserves the right to veto or ignore particular faculty decisions or to terminate the sharing arrangement. For example, the State University of New York has a governance system. When recommendations resulting from the governance process confirm management's decision, it adopts the recommendations as justification for its actions; otherwise, it simply acknowledges the recommendations and takes such action as it deems appropriate.

Recent retrenchment situations are an example. Through governance, faculty committees were created to review programs and make recommendations for cuts. Where the recommendations supported the course of action preferred by SUNY management, SUNY cited them as the basis for its retrenchment decisions. If the recommendations were not supportive, SUNY management acknowledged the input of the faculty and carried out its pre-determination.

Collective Bargaining and Governance

Unions sometimes argue that a system of governance should be strengthened in the collective bargaining process by guaranteeing its status and authority contractually so that its power no longer rests on the willingness of the governing board to share authority but derives from an enforceable legal instrument. Unions also sometimes urge that such an agreement should further strengthen the governance mechanisms by providing that decisions reached pursuant thereto by faculty should be definitive.

Do these claims make sense?

The answer is "no" – from any point of view.

Such a system would create an intolerable separation between authority and responsibility – a management with responsibility but no authority and a faculty with authority but no responsibility.

If this seems too harsh a judgment, take the following example and assume it arises in a mature, fully developed governance system which has been validated and guaranteed by the provisions of a negotiated collective agreement:

> The question is whether an assistant professor should be granted tenure or, alternatively, be given a one-year terminal appointment. This decision is made in the first instance by the tenured faculty in the department or school involved. It is subject to review by a committee of the campus senate. This committee appoints an anonymous *ad hoc* review committee which makes a confidential report on the merits of the candidate.
>
> The department faculty deny tenure on the ground that the professor's scholarship is so bad that it fails to demonstrate even minimal competence. The *ad hoc* review committee and the budget committee affirm. The aggrieved professor alleges that the adverse decision, while it purports to be a judgment on the merits, in truth is grounded on the fact that the majority of the members of the department find him *persona non grata* – too bright, too aggressive, too ambitious, too popular with the students, too unconventional in life style, too threatening to the senior members of the departmental faculty who control the votes of junior faculty members upon whom they will some day also pass judgment – in sum that he has been the victim of that collegial syndrome sometimes known as "peer fear."

By hypothesis management is unable to alter this faculty decision, even if the collective agreement makes it grievable and arbitrable. Indeed, it may be that

even the grievant is without a remedy since many agreements provide that the union controls the decision of whether a grievance shall go to arbitration. And what about the union? Whose side is it on – the assistant professor who is asserting injustice or the faculty that stands on the twin cornerstones of governance, peer evaluation and academic judgment, as well as that central political principle of collective bargaining, majority rule?

"Non-Personnel" Matters

The situation is even more unworkable if we move to what I have called macrocosmic decisions involving non-personnel matters. No sensible management is going to relinquish its authority over such matters, and no sensible union is going to seek responsibility for such management decisions.

Consultative governance arrangements – the meet-and-confer rubric – are workable. But they are subject to other objections.

The first is elitism. Governance systems are based on the premise that the members of the tenure-track faculty constitute a community of scholars, and that only the members of this select group are qualified to govern themselves. Adjunct professors; supportive personnel such as librarians; nonteaching professionals such as registrars, guidance counselors, and placement officers; not to mention all nonprofessional employees, such as secretarial, clerical, custodial, food service, and maintenance people, are excluded. As a consequence, a governance system premised on the community-of-scholars fiction disenfranchises about 75 percent of the employees of the typical college or university. Why should the tenure-track faculty be permitted to meet and confer, to the exclusion and perhaps to the prejudice of the overwhelming majority of the other employees of the institution?

The second objection is that in an era when support for higher education is on the wane, governance systems may not be worth what they cost. In addition to direct institutional subsidies reflected in a budgetary line item for the senate and its committees, there are the costs of released time, where a faculty member is relieved of part of his teaching load so that he can perform managerial functions, as well as the costs involved in diverting the faculty from its principal functions of teaching and research into time-consuming and interminable committee meetings.

Arnold Weber, the Provost of Carnegie-Mellon, recently defined a college professor as a "person who can't take 'yes' for an answer." One does not have to agree with Dr. Weber to appreciate the policy questions raised by the enormous number of expensive man-hours which are consumed by governance systems. And to what purpose? Wiser decisions? More equitable decisions? Decisions more likely to improve the work of the institution?

Governance through collective bargaining could overcome the objection of elitism by expanding the base of participation to include all of the bargaining unit, which is typically much broader than the tenure-track faculty. But this would inevitably increase the price of governance and accentuate doubts about its cost-effectiveness.

A Sample Negotiation

The position of the United University Professions, the union which represents the faculty of the State University of New York, is ambivalent. Because it represents faculty and because faculty like governance, UUP has tried to achieve contractual recognition of governance.

In the negotiations for the 1974-76 agreement, UUP sought contractual recognition of governance (both personnel and non-personnel aspects) by proposing contract language that would have incorporated faculty by-laws, which dealt with all manner of subject matter, in the negotiated agreement. UUP's major negotiations effort, however, focused on those aspects of governance concerned with personnel matters such as appointment and promotion. UUP's efforts were unsuccessful.

After negotiations for the 1974-76 agreement were concluded, UUP filed a grievance about a term appointment nonrenewal in which it alleged a violation of faculty governance procedures, *i.e.* failure to adhere to faculty by-laws. The grievance was submitted to arbitration and the arbitrator found that faculty by-laws were not covered by the agreement.

In negotiations for the current agreement UUP again sought (unsuccessfully) to incorporate governance matters in the contract by presenting demands relating to faculty by-laws and to peer review in matters of appointment and promotion.

The most important feature of UUP's position relative to governance is its interest in procedures rather than substance. UUP wants governance *procedures* incorporated in contracts. Then it can grieve when procedures are violated. UUP does not want to participate in the substance of governance because that ultimately involves making choices about programs and other matters which more than likely will have some impact on someone in the bargaining unit.

For example, UUP urged its members not to participate in governance deliberations about program cuts. In their view, the faculty would only be helping management decide which members of the bargaining unit should be laid off. UUP wanted no part of the decision-making process. It wanted only to grieve the results of the decisions, manifesting conventional union concerns over the impact of management action.

Finally, UUP is now on record as seeking to eliminate the Faculty Senate at Stony Brook and is about to go on record to seek to eliminate the Faculty Senate at SUNY at Buffalo, apparently because they have come out in support of UUP's organizational competition.

Exclusion of Governance

Our position in the State Office of Employee Relations has consistently been that governance is not a term and condition of employment. It is primarily a means by which faculty relate to each other rather than to management. Consequently, we have steadfastly refused to include any reference to governance in our negotiated agreements except in an exclusionary way. For example, the newly negotiated grievance procedure specifically excludes review of:

> ...College by-laws, policies, operating procedures, or any other form of guideline by whatsoever name, whether pertaining to a unit, department, division, school, or any other level of organization of a College and whether appearing in a College handbook or any other document, which are developed by professional staff at a College for the conduct of the affairs of the College or its sublevels of organization.

If I had my "druthers," I would go further. If a faculty desires to participate fully in the collective bargaining process and to accept the premises upon which that process is based, I think it should be prepared to remove itself from involvement in managerial functions, personnel or non-personnel, which are time-consuming and economically unrewarding, leaving such decisions to the administration, subject to challenge by their organizational representative in the collective bargaining system.

So that I am not misunderstood, I must add that my skepticism about governance does not extend to faculty involvement, informal and unstructured, largely at the departmental level, in decisions as to what is taught, who teaches it, and to whom. This method of decision-making is part of a healthy academic tradition which has worked well in our quality colleges and universities. I would hope that it would survive and spread, but I think it will do neither if it is institutionalized and made part of collective bargaining systems.

Let me finish with a rhetorical question. The functions of a faculty are said to be teaching and scholarship. Why not let the faculty teach and "schol" (or whatever the verb form is); and let management manage?

VI. PEER JUDGEMENT AND DUE PROCESS

Irwin H. Polishook

President, Professional Staff Congress, City University of New York

Peer judgement in higher education is rooted in tradition. That is not an argument either for it or against it. The tradition stands up–and should be upheld–on its merits alone.

By peer judgement I refer to the process in higher education by which a faculty member is appointed, evaluated, reappointed or denied reappointment, granted tenure or denied tenure, and promoted or denied promotion, all on the basis of the decision of his colleagues. This process is the core of the academic profession's control over its own integrity, over its own membership and over its own destiny. Since what is involved in the substance of each of these personnel actions is the evaluation of scholarship and an assessment about the quality of the dissemination of learning and teaching, they must be carried out by scholars in the field. It should not be done, as it is in elementary and secondary schools, primarily by administrators. Nor can the substance of it be done properly by students. Students may contribute to the evaluation of teaching *effectiveness*, but they are no more qualified than administrators to judge the academic foundation of faculty performance. The process of peer judgement has come down to us as the way society guarantees the academic integrity of the university.

Peer judgement is the heart of professionalism in higher education. Because it is a human process, it is susceptible to abuse. And because of its vital importance to the profession and to the individual, the possibility of abuse has to be minimized.

New Needs

To place emphasis on the abuse of peer judgement is not to reject its centrality to the life of the university. I believe when we are able to minimize the improprieties that occasionally diminish the value of peer judgement, we will reaffirm our acceptance of the value of this tradition. I also know that it is essential to be open to new modes of thought and institutional procedures or the traditions we value will atrophy.

No one should doubt that collective bargaining is a new response to a felt need on the part of faculty throughout the country. The reasons why unionization has succeeded are often the subject of study and too often the object of obfuscation. But it is essential to remember that a critical precondition to collective bargaining is almost always a realization that "shared authority" has been undermined and the position of the professor–as compared to that of the administrator and student–reduced in the greatest degree. What sometimes troubles the faculty most is its discouragement about the status of peer judgement.

Collective bargaining is one way of adjusting to this paradox of the great value placed on peer judgement and the sense of loss about its standing. A contract provides the foundation for a system in which the criteria and pro-

cedures for virtually all personnel actions—most importantly, reappointment, tenure, and promotion—become the subjects of open agreement between faculty and administration. Furthermore, the agreement reached is a legally enforceable document, in which the authority of each participant in the decision-making process is carefully outlined. In the event of a dispute, each party has recourse to a dispute mechanism, whether the grievance procedure provided by contract or the statutory bodies that exist under the law. What is significant is the fact that the terms and conditions under which the personnel process works are defined in a mutually acceptable manner.

A Question of Authority

One function of collective bargaining is to circumscribe the authority of the administration. In those instances where identifiable causes can be isolated, faculty support collective bargaining because they believe the authority of the professors over personnel matters has been subverted. In some cases this obtained in the past as a result of the expansion of higher education, where the complexity of institutions required greater managerial dominance.

Other instances grow out of particular circumstances, whether violations of academic freedom, reduction in force, the demands of students, or failure to respect the decisiveness of peer judgements. There are also those situations in higher education in which peer judgement never was effectively established. The latter circumstances provide a powerful impetus for collective bargaining, so that the faculty may assert its traditional role in the academy.

It is rare that any administration accepts collective bargaining gracefully. There have been those unfortunate episodes in which deans and presidents actively campaign against the certification of a collective bargaining agent. Administrators are sometimes vocal in their defense of "shared authority." This usually means they do not want to give up to the collective bargaining relationship unilateral power over the appointment and promotion process.

The Sources of Abuse

If one of the dynamic factors in the movement toward unionization is the faculty interest in restraining the president's power over personnel actions, an aftermath of the adoption of collective bargaining is another assignment to minimize the potential for faculty abuse of the process of peer judgement. In my view, the requirements of due process that are critical to the integrity of peer judgement fall with even greater obligation on the professoriate. Many of the problems arising out of collective bargaining that relate to peer judgements are, in candor, conflicts among the faculty themselves.

Apart from those difficulties that are intrinsic in the need to develop effective criteria and procedures for peer judgement in the contract, other problems have received considerable attention insofar as collective bargaining has affected peer judgement. Indeed, some traditional elements of peer judgement have recently been highlighted for their use as impediments to due process.

One source of abuse is the confidentiality of the peer judgement process. The peer committee may consider various items that reflect evaluations in which the individual participates; it may receive written communications from the indi-

vidual, and it may invite the individual to discuss a claim to retention, tenure or promotion. But its deliberations are generally secret, the process by which it reaches its decision it too often secret, and the reasons for its decision are generally not reported.

It is thereby possible for a *worthy* individual to be denied retention, tenure or promotion by his or her peers. Political considerations may prevail, unfairly. Personal considerations may prevail, unfairly. Arbitrary, discriminatory and capricious considerations may prevail.

I do not believe that the occasion of such abuse discredits the entire peer judgement process, nor do I believe that supervisors or students would be less prone to this kind of human imperfection. I do believe that the freedom of peers to abuse the system should be restrained to the greatest extent possible. Such restraint–which can be incorporated in a collective bargaining agreement–would strengthen the system itself by guaranteeing a greater measure of retention and reward for excellence. It would serve to protect the individual against a wrongful judgement not only by a president but also of a person's colleagues.

An Open Record

An individual should know the reasons for a negative personnel action in order to be assured that the decision did not violate his academic freedom, that it reflected adequate consideration of his professional performance, and that it was not based on inaccuracy, malice or a covert retrenchment policy. Of what value are the elaborate procedures and evaluations if they may be disregarded in determining the future of a scholar? Without reasons and the right to appeal, an individual may be denied a position for illegitimate reasons, on the basis of no sound "academic judgement," on the basis of race or sex or sexual orientation or unorthodoxy, and despite excellent and superior qualifications. Though most personnel recommendations are the product of honest and searching judgements, all of them can be suspect in the absence of stated reasons.

Requiring reasons would not be exceptional. On the contrary, it would place colleges and universities into the mainstream of public employers, who generally assume the responsibility of following the basic doctrine of fairness in their relations with employees. It would be consistent with affirmative action, whose efficacy comes into question every time a woman or minority member is denied reappointment. It would be consistent with the general tendency in our society toward the opening of records.

A New Jersey Supreme Court decision (Donaldson v. Board of Education, City of North Wildwood, June 10, 1974) makes these points:

> "It appears evident to us that on balance the arguments supporting the teacher's request for a statement of reasons overwhelm any arguments to the contrary. The teacher is a professional who has spent years in the course of attaining the necessary education and training. When he is engaged as a teacher he is fully aware that he is serving a probationary period and may or may not ultimately attain tenure. If he is not reengaged and tenure is thus precluded he is surely interested in knowing why and every human consideration along with all thoughts of elemental fairness and justice suggest that, when he asks, he be told why. Perhaps the statement of reasons will disclose correctible deficiencies and be of service in guiding his future conduct; perhaps it will disclose

> that the nonretention was due to factors unrelated to his professional or classroom performance and its availability may aid him in obtaining future teaching employment; perhaps it will serve other purposes fairly helpful to him . . . ; and perhaps the very requirement that reasons be stated would . . . serve as a significant discipline on the board itself against arbitrary or abusive exercise of its broad discretionary power."

This judicial opinion applied to a public school teacher and the decision of his board. The rationale, however, applies with equal force to a college teacher and the decision of one's peers.

The Tradition of Confidentiality

There are a number of arguments against reasons. It is said that the requirement that reasons be given will compromise the confidentiality of the peer judgement process and thereby compromise the process itself; that it will generate internecine struggles; and that it is somehow inconsistent with the tradition. There is some substance to each of these objections.

It is true that reasons will breach the confidentiality of the peer judgement process in some measure, but that is no argument against it. Academicians accepting the awesome responsibility of judging their peers and determining their professional futures should be held accountable for their decisions, if necessary. It is indeed unpleasant, to say the least, to deny a colleague reappointment, but that is no justification for hiding behind collective anonymity. A reasonable decision has a legitimate basis of which no one must be ashamed. Reasons must be reasonable, and meet the test of scrutiny if it is required. It is not true that the breach of confidentiality in divulging the reasons for personnel actions compromises the peer judgement system itself. On the contrary, it lends credence and respect to the system.

Reasons will indeed generate adversary proceedings between the peer group and the affected individuals, if reasons are accompanied by the right to appeal, as they must be. But denying an individual the right to know the reasons for termination is an excessive price to pay for collegial peace, as is denying the individual the right to challenge a career decision that is considered unfair. Unfair termination is, by its nature, adversary.

It is also true that the due process inherent in reasons may be inconsistent with the *tradition* of peer judgement, with the way it has been exercised in the past. I believe we must be prepared, in defense of tradition, to change any part of the process that we now find objectionable. The respect we have developed in recent centuries for the rights of the individual must be acknowledged and accommodated in higher education. Above all, due process is not inconsistent with peer judgement itself.

Bargaining on the Issue

Our experience at the City University of New York is instructive in this matter. The first contract we negotiated did not specifically address the university policy that reasons may not be given by committees or presidents in personnel decisions. The rationale behind this policy was that, just as full confidentiality assures the honesty of letters of reference, only complete confidentiality can

allow peers and presidents to exercise their academic judgement in a responsible manner. The divulgence of reasons, it was argued, would compromise that confidentiality and the purity of academic judgement.

We found, however, during the term of our first contract, that occasional abuses of academic judgement hid behind this confidentiality. We were frustrated and sometimes infuriated by instances of the denial of tenure by college presidents to individuals who had been judged by their peers to be excellent and outstanding in all the contractual criteria over a period of five years.

In our second contract, therefore, we established the requirement that the college president give reasons, if requested, to an individual whose reappointment was recommended by his or her peers and denied by the president. This was progress. But it applied only to a reversal by the president of a positive recommendation by a personnel committee.

The new contract, now in effect, goes one step further. It requires that, after the appeal machinery has been exhausted, the president give the reasons for all negative personnel decisions, whatever their source. The point to remember is that none of these contract changes has impaired the peer judgement tradition.

These contractual protections work in a number of ways. First, they protect the individual from abuse by management, by limiting the authority of management to bypass contractual due process or to veto its results. Second, they strengthen the effective force of faculty bodies by limiting the capacity of management to countermand the faculty will. Third, they protect the individual against abuse by his peers, when they function as management, as faculty does in personnel decisions.

Faculty's Two Functions

This dual role of faculty is unique, just as peer judgement is unique. But uniqueness does not discredit the process because it produces ambivalence and ambiguity. The dual role of the faculty has made it necessary for the union to perform a special role and, I believe, most unions have performed it well. The union must protect the collective rights of the faculty as the decision-makers in the peer judgement process. Then, the union must protect the individual rights of the faculty against potential abuse by the peer group.

Unions have performed both functions by building into the contract carefully spelled out criteria and procedures for the observation and evaluation of the individual, the requirement that reasons be given, and the machinery for enforcing the implementation of those procedures through complaints, grievances and arbitration. The resources of the union have been invested in administering those provisions, as well as the other provisions of the contract.

Through these means, we have saved many positions and many careers. We have done so without provoking massive fratricide. We have, I believe, enhanced the quality of the instructional staff and higher education in this way. We have strengthened the peer judgement process by restricting it. This is the union's most important contribution, for the individual and for the profession.

VII. IS PEER REVIEW VIABLE TODAY?

Thomas A. Shipka,

Past President, NEA Higher Education Council

— "A foolish consistency is the hobgoblin of little minds."
– Ralph Waldo Emerson

In American colleges and universities faculty members judge one another's qualifications for tenure and promotion. This tradition of peer review stretches back to the medieval guild. Peer review enjoys widespread support among professors, but it also has its critics. The bulk of the critics allege that peer committees are rife with politics. A handful of detractors liken them to the Star Chamber. In today's program I will join the ranks of the critics. In the irreverent remarks which follow, I will outline several reasons to dispense with peer review and then speculate on its future. Let me make clear that I am expressing my own opinions, not the official policy of any organization.

Impact of Legislation

In the past fifteen years or so a number of federal and state laws have been enacted which deal with civil rights and fair employment practices.[1]* It is too early to assess the precise import of this legislation for peer review, but I believe that there is reason for concern. The law prohibits discrimination in employment based on race, color, religion, national origin, sex, and age. It requires that personnel decisions be based on an objective appraisal of job performance and it states that the preferences of co-workers may not be the basis for such decisions. Needless to say, employers must be able to demonstrate that their personnel decisions are in keeping with the law.

Understandably, advocates of peer review will say that the recommendations of peer committees reflect conscientious academic judgements, not the whims of the members. Given the *modus operandi* of peer committees, however, it is not easy to prove this claim. Such committees usually meet in executive session, keep perfunctory minutes if any, and state no rationale for their recommendations. It seems to me that committees which operate this way are on a collision course with the courts which will observe that such procedures make it impossible for colleges and universities to provide satisfactory evidence that personnel decisions are non-discriminatory. I anticipate that judicial scrutiny will circumscribe the loose procedures of peer committees to protect the rights of those under review. This is sure to result in red tape and sunshine, two factors that will discourage many faculty from serving tenure and promotion committees.

Open Proceedings?

Peer review and sunshine do not mix well. This was shown in the experience of my own campus in the past few years. At Youngstown the faculty union and the administration agreed to develop a formal system of faculty evaluation to

*Footnotes for this paper appear on page 45.

help faculty to improve and to provide the basis for more objective decision-making. A joint committee developed a proposed system with two components, a quarterly student evaluation of teaching and an annual peer evaluation of teaching, scholarship, and university service. During a trial run, faculty resistance surfaced and grew until more than two-thirds of the faculty signed a petition decrying the system. The peer evaluation was the cause of the most dissatisfaction. Faculty objected to the provision that the department evaluation committee share its findings with the individual and then transmit them to the official personnel file.

The President of the university implored the faculty to cooperate despite their reservations, warning that the failure of the peer component would leave him no option but to shift the responsibility for evaluation to the administration.[2] Neither this warning, nor appeals from the faculty union, nor a series of changes in evaluation procedures were able to evoke cooperation. The chief organizer of the resistance circulated an essay which argued that the very concept of evaluation spells the demise of tenure. One of the most intriguing aspects of the rebellion was that faculty members with long years of service on tenure and promotion committees wondered aloud whether teaching and scholarship could really be evaluated. The *coup de grace* was a petition signed by nearly the entire faculty in a college renowned for its history of unremitting intramural warfare. A circulator of the petition told me that he and his colleagues felt that the evaluation system lacked the element of compassion.

There is no doubt that the proposed system had shortcomings. Yet the so-called improvements suggested by the leading critics called for surgery in the peer component so radical that it could not possibly survive. If the peers' evaluation was to be accessible to the individual and kept on file, the peers were prepared to say only nice things if they said anything at all. The faculty was afraid of the sunshine. The faculty union and the administration are now in contract talks writing the next chapter in the saga of evaluation. One of my colleagues promised me that if we are able to solve the evaluation riddle in negotiations he will rejoin the church, his faith in miracles restored.[3]

Economic Pressures

The atmosphere of economic crisis which prevails on campuses today also poses problems for peer review specifically and shared authority generally. If there is an official declaration of financial exigency, faculty members are likely to sit on the committees whose job is to cut costs. This provides ample opportunity for faculty to inflict harm on one another. Costs may be cut through faculty lay offs, forfeiture of salary increases, cuts in course offerings, reductions in funds for research and sabbaticals, increases in load, and use of term contracts and other devices for cheap labor.

Even if an exigency has not been declared officially, faculty members can practice a brand of frugality laced with self-interest. Decisions on the conferral of tenure may reflect considerations which are hardly academic. A probationary faculty member whose specialty overlaps that of a tenured faculty member is probably in store for trouble, his track record notwithstanding. Curriculum proposals which used to sail smoothly through the review process may confront

a flurry of high-sounding objections which emanate from security-conscious faculty who fear the possible consequences of an enrollment shift. Hobbes would affirm that such behavior is characteristic of the best of times; I affirm only that it is characteristic of the worst of times.

The Dangers of Shared Authority

The principle of shared authority can be a trap. The standard operating procedure of the politic President is to involve faculty members in an administrative scheme to give it respectability among the faculty. It is a form of manipulation and cooptation. One sees it in the spectacle of the chaired professor with a three-hour load and hundreds of shares of IBM who is appointed to head up the "neutral" study commission on collective bargaining, or in the presidential request that the faculty senate design a plan for retrenchment.

The fact that Committee "X" includes faculty does not mean that Committee "X" is serving the faculty's interests. Colleagues may be paring the institution's budget at the expense of colleagues at the very moment when a show of unity would scuttle a precipitous move to retrench.

Economic crisis is a time for a faculty to close ranks, appreciative of that wise maxim that those who do not hang together are destined to hang separately. This is easier said than done. Faculty are sprinkled in a hodge-podge of miniature societies on a campus–departments, divisions, colleges–which work against solidarity.

Conflicts of Interest

Peer review is problematical for faculty unions. The purpose of the faculty union is to advance the interests of the entire faculty. In the midst of peer review, however, these interests come into conflict. The peer committee which recommends a tenure denial says to the union: "If you advocate *our* interests, support our recommendation." The tenure candidate says to the union: "If you advocate *my* interests, oppose their recommendation."

The union's constituency includes both plaintiff and defendant. It requires the union to serve two masters. The peers view a grievance with alarm since it calls into question the worth of their judgment. They are also troubled by the fact that their dues support the organization that takes them to task. The grievant is wary that the union will merely go through the steps to appease the peers. The dilemma calls for a modern day Solomon. Surely the union officer who wins re-election should be the envy of the State Department.

It is my belief that this delemma is one reason that unions acquiesce in the view that academic judgements are not a fit subject for third party arbitration. I do not believe this view is tenable. It flies in the face of the principle of fallibility, which means that the judgements of peers and administrators may be faulty, and the concept of due process, which demands a remedy when there is a wrong.[4] The union reticence on the matter reflects an unspoken fear that arbitration of academic judgements would exacerbate conflict between the union and peer committees, and possibly cast doubt upon long-standing idols of the tribe such as professorial rank. To put it bluntly, peer review compromises faculty unions.

On the question of rank, it is high time to ponder William James's point that a distinction without a difference is no distinction at all. I wonder whether promotion committees make real distinctions in the majority of recommendations. Can the fact that Professor A was promoted and Professor B was not really be justified? Is the resistance of faculty to sunshine in peer evaluation a signal that academic judgement is often a euphemism for chance?

We need to turn a discerning eye on the legitimacy of rank before we anguish over who should decide promotions. A friend recently recounted the experience of a general who, learning that he would remain a three-star general, queried his superiors as to why he had not received his fourth star. The reply said that he had received too few votes. I suspect that promotion committees would empathize with the author of the reply.

Guidelines for Peer Judgement

Thus far I have said that peer review may not withstand judicial scrutiny, that peer review is dysfunctional during economic crises, and that peer review poses a dilemma for faculty unions. The faculty rank and file, if I may be so bold as to use that phrase, will hardly find these points persuasive. After the Bronx cheer subsides, they would tell me that peer review produces less evil than would occur in its absence, that peer review is needed to maintain standards in the profession, and that an end to peer review would signal the rise of the administration and the triumph of the much-maligned industrial model. Assuming this response, assuming that counter-arguments would be futile, and assuming that faculty want to retain peer review, let me turn my attention to the future.

If peer review exists, it should provide safeguards to individuals which are rare in academe today. If faculty are prepared to respect such safeguards, then peer review may both survive and prosper; if they are not, then it may survive but it will not prosper. If I were to formulate a list of safeguards, it would include the following:

1. The faculty member has a right to periodic evaluation of his performance. He should see this evaluation, and respond to it in writing if he wishes. It should be placed in his official personnel file.

2. Peer committees should review the evaluations carefully as part of their deliberation on a candidate.

3. Peer committees should keep accurate minutes which record the criteria used by the committee, the system for rating candidates, and the votes of the members on each candidate.

4. These minutes should be accessible to the candidates and their representatives.

5. Peer committees should provide a written rationale for their decision to each candidate whom they disapprove.

6. The decision of a peer committee should have the status of a recommendation to the President or another appropriate administrator who is the decision-maker of record if a grievance is filed.

7. The candidate should have the right to waive peer review if he wishes.

8. The candidate should have the right to appeal a denial of tenure or promotion to arbitration.

Conclusion

In conclusion, I would like to issue a challenge to the national organizations. Much is said about the need for faculty participation in the governance of colleges and universities. Little is said about the impact of faculty power upon the faculty.

In order to redress the balance, the NEA, AFT, and AAUP should take the initiative to draw attention to the need for faculty responsibility in peer review. They can sponsor conferences on due process and fair employment practices, formulate policies on peer review, and support litigation which promises to produce judicial guidelines for peer review. In their zeal to protect themselves from rebellious taxpayers, economy-minded legislators, and misguided administrators, faculty must not overlook the problems which they bring upon themselves.

Footnotes

[1]For an exhaustive compilation of the pertinent laws, executive orders and regulations, see the *Fair Employment Practice Manual*, The Bureau of National Affairs, Inc., Washington, D.C.

[2]In his letter to the faculty dated October 21, 1976, Dr. John J. Coffelt, President of Youngstown State University, wrote in part: "Federal law and regulations now make it clear that personnel decisions such as promotion and tenure must be defensible as having resulted from fair procedures based upon objective criteria of job performance. We must be in a position to demonstrate that subjective judgments and considerations not related to job performance play no part in these decisions. The real question here is whether we will have a university-wide system of evaluation which rests upon the voluntary and conscientious judgment of a faculty member's peers. We have agreed to such a system, and if it does not work, we will have to look to alternative methods."

[3]For a critique of traditional faculty evaluation, see Lionel S. Lewis, *Scaling the Ivory Tower: Merit and its Limits in Academic Careers*, The Johns Hopkins University Press, Baltimore, 1975.

[4]For an argument in support of arbitration of academic judgement, see M. J. Morand and E. R. Purcell, "Grievance and Arbitration Processing," in J. P. and S. C. Vladeck, editors, *Collective Bargaining in Higher Education – The Developing Law*, Practicing Law Institute, New York, 1975, pp. 297-330.

VIII. UNION AND ADMINISTRATION ROLES IN BUILDING SUPPORT FOR HIGHER EDUCATION — I

Fred E. Crossland

Program Officer (Higher Education)

The Ford Foundation

In recent months a frequently repeated television commercial featured a renowned senior actor touting an automobile. Sounding and looking as if he still were playing Professor Henry Higgins in "My Fair Lady," his distinctive clipped British accent proclaims that his product is "unbelievable." Every time I see that commercial I am impressed by its curious illogic. The actor is so convincing that I believe him, which means that I agree with his assertion that the automobile is unbelievable. Accordingly, I don't believe his claims on its behalf. No sale.

Henry Higgins is not the only unbelievable professor. For years, most of us in the higher education "industry" have been making incredible claims for our "product." We shouldn't be surprised to discover now that a substantial proportion of our fellow citizens simply don't believe us. We resorted to hyperbole, and the incredible really did turn out to be incredible.

The Extravagant Promises

Higher education was—and to some extent still is—advertised as the most effective and fastest acting all-purpose panacea guaranteed to give both instant and long-term relief. It was the best device to fight poverty, racism, and virtually every social malignancy. It was the mechanism to engage in esoteric research to achieve mind-boggling advances in arcane fields ranging from outer space to inner peace. It promised upward mobility—a phrase of curious redundancy, since everybody naively believed that social mobility was one-directional and up. It ensured the college graduate lifetime earnings far in excess of those of his less-schooled counterpart. (In this context, I happily insist that "less-schooled" is not synonymous with "less-educated.") In sum, higher education promised "the good life" to every girl, boy, woman, and man who would partake of it.

The interesting fact is that each of these extravagant claims has a grain of truth within it. Higher education has delivered and continues to deliver on all these promises, at least partially. But our extraordinary results simply have not been able to match our rhetoric. We over-promised and led society to over-expect. Now, alas, our accomplishments are forgotten and our short-falls remembered. Higher education stands accused of deceptive and misleading advertising. We have become unbelievable, and hence we stand in jeopardy of losing public support—financial support, political support, moral support.

Key Questions

This rather depressing conclusion—which I readily admit suffers from our occupational tendency both to overstate and to be simplistic—needs dispassionate analysis. Accordingly, I urge you to consider the following four questions in the context of this meeting:

First, is there in fact a decline in public support or are we suffering from some sort of collective academic paranoia?

Second, to what extent–if at all–does the relatively recent emergence of faculty unionization contribute to the alleged decline in public support?

Third, what could and should both sides at the faculty collective bargaining table do to increase public support for higher education?

Fourth, what are the long-term prospects for American colleges and universities in their quest for increased public understanding and support?

Degree of Economic Support

Let us consider the first of my questions: Is public support really declining or do we just think that it is?

I can't give you a quick and simple answer. I am not sure what "the public" means; there are many competing publics that tend to perceive higher education in quite different ways. I am not sure that we have accurate measures to determine whether support truly has been rising, falling, or remaining stationary. And we all recognize that our own individual perceptions depend upon where we each are and how circumstances impact upon us personally; each of us sees the world through his own porthole. It is important that we remember this last fact, especially since we are meeting in New York City during a period when "extraordinary crises" seem ordinary. We must resist the temptation to make generalizations based upon exceptions.

My hunch is that the alleged national decline in public support and confidence may be more imagined than real. Note just one important manifestation of it–financial support. During the sixteen years between 1959-60 and 1975-76, private support of American higher education increased by 433 percent; the federal government's support increased by 550 percent; the fifty state governments' support increased 744 percent; and local governments increased their support by 950 percent.

American higher education this year is an "industry" spending approximately $50 billion dollars; the figure for all levels of education approaches $130 billion annually. It is significant to note that during 1964-65–a boom year riding the crest of President Johnson's "Great Society"–state and local governments throughout the country spent 38.3 percent of their direct general expenditures on education at all levels. One decade later, during the 1974-75 post-Watergate emotional depression and a chilling economic recession, the percentage was exactly the same–38.3 percent of all state and local government direct general expenditures went for education.

Mounting Competition

And yet, the anguished cries of so many educators in the last year or two might lead one to conclude that schools, colleges, and universities in America suddenly had fallen from grace and were being systematically undernourished by society. Such has not been, and such is not now, the case. Even if we take into account inflation during recent years and express the figures in terms of per student expenditures, the fact is that the American people, both in the allo-

cation of their private resources and through their elected governments, continue to demonstrate extraordinary confidence in their colleges and universities.

I hasten to add, however, that there is a lot of cloud surrounding the silver lining I have tried to describe. Public support–both voluntary and through taxation–has not come easily. We have had to work ever harder just to keep from falling behind.

Other social problems and needs for other public services have surfaced and altered priorities. Energy deficiencies, increased crime and inadequate police protection, pollution control, environmental problems, eroding tax bases in many of our largest cities, inadequate mass transportation facilities, intractable unemployment, costly and possibly inefficient health delivery systems, and persistent inequity in the treatment of women and racial minorities are among the most obvious issues competing today with education for public attention and financial support. Only the most widely optimistic forecaster would predict that over the short term education is likely to be successful in that competition.

So my answer to the first question merely affirms what we already know. During the last two decades, higher education has fared quite well in securing widespread moral and financial support from the American people. In very recent years it has become increasingly difficult to maintain that high level of support. In the years ahead, it almost certainly will become even more difficult.

Public Impact of Faculty Unionism

My second question gets much closer to the heart of this meeting: To what extent–if at all–does the relatively recent emergence of faculty unionization have a negative impact on public attitudes respecting higher education? In a word, my answer is "Considerable!"

In part, this may be true because faculty collective bargaining is a relatively new phenomenon. The public is not accustomed to seeing university professors walk the picket line or even threaten to do so, and many Americans simply find it distasteful and offensive. A very small number of careers–notably in organized religion, law, medicine, and college teaching–historically have enjoyed high status if not high income, and society generally has not expected its clergymen, lawyers, doctors, and professors to behave the same way as manual laborers, clerks, and industrial workers.

To be sure, much of the historical social class snobbery and stratification implicit in such attitudes has been disappearing gradually, but by no means has it totally disappeared. If and when faculty unionization becomes the nationwide norm in higher education, there probably will be increased public resignation to it. Familiarity may breed acceptance; whether or not it also will breed contempt remains to be seen.

Another reason that faculty collective bargaining often generates negative public reactions is a matter of simple economics. It is extremely difficult for a person earning $10,000 a year to shed tears for a striking professor making $20,000. Furthermore, there continues to be a widespread public conviction that professors only work a very few hours a week, enjoy extraordinarily long vacations, have guaranteed lifelong jobs, never get their hands dirty, incur no physical risks, and hence already are overpaid.

Still another consideration that helps shape negative public attitudes is the direct connection that obviously is made between increased compensation for faculty members and increased costs for students and their families. In private colleges and universities, an increase in faculty salaries predictably means an increase in tuition. At public institutions, it means an increase in taxes and perhaps also a tuition hike. Since rarely if ever is it possible for the faculty to prove conclusively that increased salaries and benefits for themselves will result in increased "productivity," offsetting savings, better education for the students, or other demonstrable advantages to the students-parents-taxpayers who foot the bills, it is difficult to create sympathetic public attitudes.

Indeed, the occasional name-calling, well publicized charges and countercharges, and other manifestations of messy labor negotiations confirm the negative impressions held by so many of our fellow citizens. Both labor and management– faculty and administration–too often invite ridicule and disdain. Neither seems able to generate any significant friendly or supportive public response. Only rarely is there a constituency "out there" that cares one way or the other. If a college or university actually is closed by a strike, it often appears that only those on the local payroll evince any concern. The public in general vacillates between anger and apathy.

Cooperative Action for Public Support

And now, my third question: What could and should both sides at the faculty collective bargaining table do to increase public support for higher education?

Before trying to answer that, let me make explicit a point merely suggested in my earlier observations–namely, that "public support" means much more than "financial support," and the latter depends upon and logically follows sympathetic appreciation of higher education's goals and achievements.

The individuals who comprise "the public" will support our colleges and universities–and the people employed at those institutions–to the extent that they are persuaded these educational enterprises truly are important to them individually and collectively. In my judgment, that end can be achieved only by cooperative efforts by faculty members and administrators.

That is not to say that the healthy and normal tensions between academic labor and management should be ignored or papered over; on the contrary, there may be much that is salutary in their adversarial postures. But it does mean that both sides of the negotiating table also must realize that the considerations that unite them are no less important than the pressures that divide them.

I recognize that the media and the public at large pay most attention to controversy, division, and contention. That's the sort of stuff that makes headlines and commands thirty seconds on the evening television news. Agreement and consensus too often lack drama and hence rarely are considered newsworthy. Academic negotiators on both sides of the table must recognize these facts and make strenuous efforts to counteract them. It is difficult, but I think it can be done.

The Areas of Shared Concern

To be specific, I believe that the first order of business in academic labor

negotiations should be identification of all areas of agreement, of shared concerns, of mutual benefits. Then there should be a joint effort to convey that consensus to the community at large.

In this context, I am not referring to agreement about purely internal aspects of academic life and governance. The public really isn't interested in such things as whether or not librarians are included in the bargaining unit, the scheme for representation on the faculty senate, management rights, or the fine legalisms of grievance procedures. But the public is—or certainly should be—interested in what the college or university actually does and why it is important to society now and in the future.

These things can and should be expressed in simple and direct language, without resorting to the hyperbole and unbelievable claims I alluded to at the outset of these remarks. And they should come from academic labor and management jointly, with full recognition that both are essential to the higher education enterprise and both have a common stake in its well being.

Emphasis on the Public's Concerns

The public is concerned with a broad range of perplexing problems that often strike close to home. The list is long and familiar: improved health care, conquest of disease, overcoming energy shortages, reduction of unemployment, safety on the streets, adequate housing, dependable public transportation, personal security during retirement, new job opportunities for the young, an end to racism and bigotry, and so it goes. These are the issues the public worries about, not the petty academic bickering that too often focuses on internal campus trivia. If higher education expects to gain public support it had better demonstrate, by deed and word, that it too is concerned about these larger social issues and is working actively to help find solutions.

The case is not difficult to make. Virtually all of the social, economic, and political problems cited above can and will be solved only by well educated people of good will. Our colleges and universities have been, are, and will continue to be the training grounds for society's probelm solvers. We must make this point clearly, succinctly, and believably. And we must make it cooperatively, with academic labor and management jointly conveying the message.

Society must be convinced that higher education is an extraordinarily good public investment. The point is not, as some recent critics have tried to assert, that the value of a college education is declining; that is a depressingly narrow concept that doesn't look beyond the earning capacities of individuals. Rather, we all must look at the broad picture and assess the benefits that accrue to society. When this truly is comprehended by the public—and I include the public's agents in city halls, state capitols, and Washington—higher education will enjoy deserved and sustained support. The question then will not be whether society can afford to support the enterprise: it cannot afford not to.

The Outlook

Finally, my fourth question: What are the long-term prospects for American colleges and universities in their quest for increased public understanding and support?

I have already provided a partial answer. If the higher education community will work together along the lines I have just indicated, I see reason for cautious optimism. I hasten to add, however, that our institutions of higher learning–and the people who toil within them–have a singularly unimpressive record respecting cooperation.

Petty institutional rivalry and debilitating competition have been the rule rather than the exception. Rare indeed is the truly successful consortium, the significant sharing of scarce resources, or the willingness to submerge institutional advancement in the interest of achieving broader social goals. I have few illusions. What I advocate will be extraordinarily difficult to achieve. I recognize, of course, that colleges and universities employ fallible human beings, not faultless paragons of selfless virtue.

So I am pleading for idealism and dedication, but I also am appealing to higher education's own self-interest. The goals are not easily achieved, but that does not mean that we should not keep trying. After all, our institutions and our graduates are routinely achieving today what we considered impossible yesterday.

We must strive for this "impossible" consensus, and we must do it in a credible way. If we are successful, all of us – faculty and administrators within higher education and society at large – will be the beneficiaries. That is promising a lot, but I believe we can do it if we really try.

IX. UNION AND ADMINISTRATION ROLES IN BUILDING SUPPORT FOR HIGHER EDUCATION — II

Edward B. Fiske

Education Editor, The New York Times

I would like to say at the beginning that I'm very honored to be here and especially to be on the program with Fred Crossland. A lot of documents cross my desk–every public relations official of universities in the country feels it incumbent upon himself whenever the President of his institution utters a speech of at least 10 pages or longer to send me a copy–and you very quickly learn whom to pay attention to and whom not to. Fred Crossland is one of those who, when something from him crosses my desk, has to be read. My first inclination is to applaud his speech and sit down, but I guess I'm supposed to say something else, so I will.

People often ask how is it I found my way from being religion editor to education editor. Actually, at least in journalistic terms, the fields are very similar. The main difference seems to be that in education more people take dogma seriously. I used to joke that in covering religion, my training in political science helped a lot more than my theology. Now, I'm finding in education the reverse is true. Actually, though, when I was covering religion, I used to follow education news fairly closely because I very soon learned that things happen on campuses about six months before they happened in churches. So I could look a lot smarter than I really was, simply by anticipating certain trends.

The Public Image of Higher Education

The question is how to build cooperation between labor and management in building support for higher education? The first thing we have to ask in trying to answer that is: What is the image that people have of higher education? I would say that the general impression that most people have is that it's eroding, that public confidence in higher education is not as strong as it was. Basically, the impression is that higher education is now competing relatively less successfully with other social goals–health care, transportation and so forth–and that a college education in particular is worth less than it used to be.

Change magazine had a big article that suggested that whereas in 1969 the average college graduate would start off with a salary 24 percent above that of the non-college graduate, now this number is down to 6 percent–when he or she can get the job. Another figure that's calculated is the lifetime return on investment of the tuition and the time that you invest in a college education. That figure used to be 11 percent, now it is said to be 7 percent.

It seems to me that it's certainly true that higher education is having to justify itself more in relation to other social goals, and I think this is probably a good thing. It certainly is forcing higher education to think through what it's all about much more clearly. It's also requiring much better management of institutions. In the 1950's, during the period of unprecedented growth and the

expectation that this would continue, it was virtually impossible to mismanage an American college. Whenever you made a mistake it could be covered up by more funds, or Mr. Crossland would find a grant, or something.

The Value of College

Regarding the value of the college education, it may very well be true that in strict economic terms those figures are correct. It still does not alter the fact, though, that it's the college graduates who by and large are going to get the good jobs. I don't think this fact is lost on very many people. This image of the declining value of the college education tends to be, let's say, at least overstated.

Another factor is that if there are problems of public confidence in higher education, or the image of higher education today, these are not necessarily in the economy but are often of the college's own doing. Again, I'd like to go back to this question of the value of a college education. It seems to me that colleges have always taken the easy way out and justified themselves on the basis that you'll get a good job, the introduction to the good life, a passport to security and status in our society. In fact, this is never what colleges were mainly all about. The goal of an education, it seems to me, was, is and always will be to train people to think, to introduce them to the culture, to make them creative thinking people.

I'm reminded of this when I look at the problems of writing today. We've been doing a lot of articles about problems in writing at the college and secondary levels. It's the subject of the year. And the more I look at the methods that seem to be working, the more I'm convinced that good writing is simply clear thinking and getting it down on paper. In the absence of clear thinking, you're not going to have good writing. This is supposedly what colleges are all about.

It's commonplace to refer to the knowledge explosion and how the facts that you learn today will be irrelevant five or ten years down the road in whatever field. The point of college is to teach you to handle ideas, to learn methods of researching, not to simply give you all the information you'll need. There's a statement by Kingman Brewster that I often think of when dealing with this subject that he made at the end of a recent annual report. He says:

> Perhaps the most fundamental value of a liberal education is that it makes life more interesting. This is true whether you are fetched up on a desert island, or are adrift in the impersonal loneliness of the urban hurly-burly. It allows you to see things which the undereducated do not see. It allows you to understand things which the untutored find incomprehensible. It allows you to think things which do not occur to the less learned. In short, it makes it less likely that you will be bored with life.

Now he's talking about liberal education in the context of Yale, but it seems to me that the same points would apply anywhere. I assume this is a point that Bob Kibbee makes when, responding to the semi-weekly reports on SEEK that seem to be appearing all the time, he argues that City University ought to be judged not simply by the number of degrees. There are quality questions. Even in the absence of that sheepskin, that passport, there are things that are worthwhile about higher education. In short, if the image of higher education is suffering these days, I think it's to a large extent the fault of the people in higher

education. You've been selling it on the wrong basis, and now it is catching up with you.

Declining Enrollments

Second point: the question of retrenchment. It's obvious when you start thinking about the immediate prospects for higher education, you have to think about the demographic situation. As anyone in this room knows well, according to most of the projections there will be anywhere from 1/4 to 1/3 fewer students in the 18-22 year old range going to college in the 1980's. Elementary schools are closing; in most communities at least there's been some consolidation. High schools are now in the process of feeling the pinch, and pretty soon higher education will.

I have some mixed thoughts about this, because I'm not sure it's quite that simple. On the one hand, there are soft as well as hard factors in college enrollment. We hear a lot about new markets, women going back to school after their kids get into elementary school, the new market for adult education.

There is a lot of naivete abroad about this, because there are relatively few colleges and universities that I think are going to be in the position, if only geographically, to take enormous advantage of this potential for the new adult market. Obviously, the urban schools are in a better position to do it than the ones that are out in the countryside somewhere. So I tend to think that some college administrators are a little bullish about the extent to which these new markets will save them from the dearth of 18-20 year olds.

On the other hand, I think we also have to be wary about the projections. Walter Adams, a distinguished professor at Michigan State, has a fascinating article to which I would call your attention. It's in the February issue of the *Journal of the American Economic Association*, and it's one of the freshest bits of thinking in this area that I have come across in a long time.

First, the projections are notoriously bad. He notes that in 1961, for instance, the Bureau of Labor Statistics forecast 100 percent increase in the demand for scientists and engineers in the research and development area by the 1970's; it turned out to be 39 percent. We think more recently of what our expectations were about college enrollment. Last year they were up 9.4 percent, much to everybody's surprise, and this year they were up 4.5 percent again to the surprise of most people in higher education.

Financial Factors

The other point he makes is that Federal support in this area is pretty volatile. If you think back over the factors which have caused the surge in college enrollment—the G.I. Bill, Sputnik, the BEOG program—you realize how unpredictable most of these have been. Think how, if you had switched 6 or 8 votes in the Senate on the SST, this would have affected the whole engineering industry.

In other words, there are a lot of input factors on the part of the federal government alone that can throw projections way off. State appropriations, he points out, tend to be very much reflective of the current economic situation—so when things get tough, as they have been recently, it's an easy area to cut back on. On the other hand, if things turn around, the pendulum can swing very

far in the other direction. So there's a volatility to some of the soft factors that affect enrollment, which I think ought to be a warning not to plan too carefully about some of these projections.

He also makes another point, and this gets around to our immediate subject. The tax structure for most of our supportive higher education is fairly regressive. The participation rate of 18 to 24 year olds in college, the college going rate, for those in families above $10,000 a year is twice that for under $10,000 a year. By and large the public support for higher education basically benefits the middle and the upper middle class disproportionately. It really is a kind of regressive form of taxation.

He raises the question, what would happen if the professors and the managers got together and pushed for ideas like progressive tuition schedules for public institutions. This would make the support of public higher education a much more progressive, as opposed to regressive, affair. I don't particularly want to argue that issue—you can make arguments either way—but the point is that there are matters of social policy of that sort which affect enrollment. There is room for maneuvering; there is room for lobbying or developing public support around these kinds of ideas. The public policy does have an enormous effect. Here would be a second area where there is possibility for cooperation between the professors and the people running the universities.

Consumerism Hits the Campus

Third and last point: schools as consumers. During the 1960's and early '70's, once Vietnam died down, the campuses were hot-beds of consumerism. They were the recruiting ground for Nader's Raiders and the shock troops in going after General Motors and so forth. Then it occurred to some wise person that universities were not only a source of manpower for Nader's Raiders; they were also a big industry. They were sellers of services—50 billion dollars a year of services, as Mr. Crossland has just pointed out. So now people's attitudes towards colleges are changing very much in line with the consumer revolution.

Ralph Nader, as you all know, is investigating the Educational Testing Service. There is an enormous amount of interest in the whole testing process—in opening it up, in challenging the so-called monopoly of ETS.

There's a case in Connecticut of a student who has sued the University of Bridgeport for the refund of her tuition because she alleges that she did not learn what was promised in the catalog in a graduate education course that she was taking. The first reaction of course may be why anybody ever expected to learn anything in a graduate education course. But, anyway, it's significant that the student is not a 21-year-old. She's an older student who knows her way around, and she was rewarded by assignments like "read this article and paraphrase it." She says, "That's not what I was promised, and I want my money back."

At the moment I am following a case out in Copiague, Long Island of a student who got a diploma from Copiague High School. The only problem is that he can't read it. And it's English, not in Latin! He claims he was graduated even though he had a second or third grade reading level; and he is suing because he cannot get a job.

The concept of educational malpractice is one which is now creeping into our

vocabulary. If it's happening to Copiague High School now, it's going to be happening in the colleges fairly shortly.

The best case on this, of course, is the one at Columbia University about 10 or 12 years ago. Columbia sued a student for non-payment of tuition. He filed a counter suit on the ground that they had not made him wise. He said there was a prima facie case that he didn't have wisdom; or else he wouldn't have been in this fix. The suit cited statements by ranking administrators, outlines of principles in college publications and inscriptions on campus buildings about how people at Columbia were going to be imbued with wisdom.

That particular suit did not get anywhere and is not one of the landmarks in the field. Nevertheless, the point is that education on all levels is now a target of the whole consumer movement, and quite rightly so. In short, higher education is beginning to feel the pinch of the word accountability that's been with us at the elementary and secondary level for some years now.

You're going to have to abandon many of your rather arbitrary ways of doing business. The Buckley Amendment was a sign of this, simply making information available to students about their files. To me the question is why in the world did it take the Buckley Amendment to make you do this? There is a lot of crying in higher education about federal control; you can't talk to a college president for a minute and a half without the idea of federal involvement coming up in the conversation. I realize there are some legitimate objections here, but why does it take a federal law to let a student look at his records?

Look at the whole question of due process in suspensions. When I think back to the way suspensions, which obviously have a tremendous effect on people's lives and careers, were handled when I was in college, the arbitrariness of it in the present context is mind boggling. You wonder how you ever got away with it. You're all aware of the support the Fund for the Improvement of Post-secondary Education, (that incidentally is one of the worst words that has ever been invented–"Post-secondary"; I wish you'd declare a moratorium on the use of that word), has given a national task force in the matter of better information for student choice. Its report is due shortly, and the *Chronicle of Higher Education* had a piece a week or two ago about a preliminary draft proposing new ways to provide more information about cost, financial aid, tuition refund policies, details about academic programs, possibilities for completing your degree in a shorter period of time and so forth. Proprietary shools are forced to say, "We placed so many graduates in these jobs." Now the non-proprietary sector is feeling the same kind of pressure.

Collective Bargaining Conflicts

Of the three areas which I've mentioned, it seems to me this is the one where there's probably more potential for conflict between professors and administrators than in any of the other two. I couldn't agree more with what Fred Crossland said about the public's interest in your trivial issues, including the narrow issues of collective bargaining. While he was talking I was reminded of somebody who said that the reason academic politics are so bitter is that so little is at stake!

People are not interested in this kind of thing, and especially with adjust-

ments necessary to respond to the whole consumer thrust, there is enormous potential for conflict. But my point is that here, as in the other areas, it seems to me that the reasons for cooperation for the sake of the common enterprise are overwhelming. It means the colleges, both faculty and administration, are going to have to be a lot more flexible.

The image of the professor as having a schedule like a semi-retired banker is fairly pervasive. I know one local college has been looking seriously about starting up programs in Westchester but has just about given up because they don't think that they can convince their full professors to participate. We need some more imagination on the part of administrators and a lot more flexibility on the part of faculty members if this is to work out.

So, in conclusion, I would like to say that there is this residual faith that Americans have, and they always will have in higher education. Nobody's ever going to be concluding that higher education is useless. The problem is, as Fred said so well, that colleges and everybody in them have to convince people that they really are concerned about their needs. This applies to social needs and involvement in the great social issues of the day, but it is also true of personal needs.

It seems to me that it is incumbent on you to look hard at the areas of growth that remain within your control, to develop the flexibility to pursue these, to try to accept the fact that you are in the business of serving consumers, and to adopt the imagination and flexibility to respond to this new reality. Put in these terms, the question of whether there's room for cooperation between faculty and administration answers itself.

X. THE PRE-COLLECTIVE BARGAINING ORGANIZATIONAL PERIOD

Robert E. Doherty

Associate Dean, New York State School of Industrial and Labor Relations, Cornell University

Much of what I have to say about the options open to administrations and faculty organizations during the pre-bargaining period may not fit all circumstances. The National Labor Relations Act and the labor law created under that Act both prescribe and proscribe certain types of activity. Thus the prescription and proscription applicable to private colleges and universities can differ markedly from those obtaining in the public sector. And, of course, there are substantial differences among state laws in respect to the duties and obligations of the parties during the uniting and election periods. For this reason I will deal with the pre-bargaining issues in a very general way. Another reason for not being very specific is that, as a non-lawyer, I am not sufficiently familiar with the appropriate statutory provisions and relevent case law to make any comments that might be deemed to be memorable or even particularly accurate.

With these caveats in mind, I will walk you through the first few steps that lead to recognition and bargaining. The first thing that could happen is for an employee organization to seek recognition as exclusive bargaining agent for certain categories of employees in a college or university without an election or a petition or card count.The claim would be that the organization represented a majority of these employees and recognition ought therefore be extended automatically.

The second thing that would probably happen is that the administration of the institution would tell the leader of the employee organization to get lost. The employer would no doubt require that greater assurance be given that the employee organization indeed represented those it claimed to represent. The question must also be asked as to whether the categories of jobs identified constituted an appropriate bargaining unit.

Appropriate Unit

Since most employee organizations recognize that a bare demand of recognition usually bears little fruit, they tend to follow a more orderly procedure. They first decide what unit configurations would best suit their purposes. What kind of unit would most likely assure an election victory (where are the members and the sympathizers), and what unit would be least troublesome to represent? Sometimes these objectives are not entirely compatible, but the employee organization can worry about that when the time comes.

The next step is for the employee organization to demonstrate a showing of interest. This is usually done by getting a substantial number of employees in the proposed unit (usually at least 30 percent) to sign cards authorizing the organization to represent them for collective bargaining purposes. At this point a rival employee organization may want to get in on the act, and it would need, as an

intervener, a smaller number of signed cards—sometimes as few as 10 percent of those in the proposed unit.

Submission of the cards triggers the appropriate administrative agency into action, the National Labor Relations Board if it is a private university, a state agency if it is public. The first chore of the agency is to determine the appropriate unit, assuming there are differences of opinion on the matter, as is often the case. An appropriate unit is one that is not inconsistent with statutory guidelines, whatever they might be. In some instances the agency is obliged to establish the *most appropriate* unit. This means that there is only one unit configuration that would be deemed appropriate, and the burden is on the parties to demonstrate to the agency that all the statutory bases have been touched.

Single or Multi-Campus?

What are some possible areas of difference on the uniting issue, between the union and the employer, or as is sometimes the case, between the unions themselves? If the campus is part of a multi-campus university, and the statute is not specific as to whether bargaining should take place singly on each campus or in a multi-campus unit, we probably have our first controverted unit issue. Unions tend to want, though not always, campus-wide units, since it is extremely difficult to secure a sufficient showing of interest simultaneously on several campuses. Employers recognize this difficulty. That is one of the main reasons they support system-wide units. These are not the only reasons for the difference of opinion, of course, and surely they are not reasons one would give to a hearing officer. Much depends upon the authority of the governing body, its administrative rules, the problems and advantages of negotiating and policing single or multi-campus agreement.

To be sure, in many instances the parties will have no options on the matter of single or multi-campus units, since the statute may foreclose the possibility of exercising them. But in other instances the statute will be sufficiently vague to allow for almost any combination. I take it as given that the parties will quickly learn what the options are and just as quickly decide which of them suit their respective purposes.

Professional Schools

A second uniting question is whether faculty in such professional schools as medicine and law have sufficient community of interest with lesser breeds of professors to warrant being included with them in a single unit. In most instances the NLRB has decided that they do not, a lack of community of interest being the usual reason given.

There are different patterns in the public sector. In the SUNY system and at Wayne State, for example, the law schools were included in the general unit; at the University of Oregon all parties, including the doctors and lawyers themselves, decided that it would be better if the professional schools went their separate ways.

To the degree options are available, I would hazard that in most instances the professional schools would not be included in a broader unit. The union would

be concerned that there might be too many "no union" votes in those quarters; the doctors and lawyers would fear that their special needs would not receive adequate attention by the union; and the employer, although believing, as would the union, that the majority of these "professionals" would vote "no union," would nonetheless prefer their exclusion. Professors of law and assistant professors of English, it would be argued, have different interests and needs, operate in entirely different labor markets, and in the main do not make good bedfellows, although it might be tempting to the employer to stick the opposition with all that diverse, contradictory, and probably ill-informed free legal advice.

Non-Teaching Professionals (NTPs)

Another unit issue is whether non-teaching professionals (librarians, counselors, research associates) ought to be covered under the same contract as the professoriate or be dealt with separately. The tendency has been to put both groups in a single unit in that the unions tend to welcome the NTP's vote since this group seems to feel even more aggrieved than the professors, and the employer isn't eager to bargain two separate contracts.

Such a unit can present difficulties for both sides in negotiations, however, since, if one can generalize from the SUNY-UUP experience, the NTPs tend to constitute a disproportionately high percentage of the union's membership. One can expect under these circumstances that salary proposals will favor those with the lowest income. (In the recent SUNY-UUP settlement the adjustment ranged from 11 percent for those at the bottom to 3.7 percent for those on top.) One might also expect that since, in bargaining, unlike items are frequently traded off for each other, a benefit sought by the NTPs (greater due process, say, for research associates and librarians) could come at the expense of a benefit sought by senior professors, a lighter teaching load, for example. Probably both unions and employers see these as possible problems down the road, but they do not loom as important as the immediate issues of winning the election or avoiding the pain of fragmentation.

Exclusion of Department Chairmen?

Possibly the most vexing question the parties face under the uniting issue is whether department chairmen belong in the rank-and-file bargaining unit. To be sure, under the NLRA and several state statutes supervisory employees are excluded from coverage of the Act. But that does not settle the question of whether department chairmen are supervisors under the meaning of the exclusionary language.

Much depends upon what they do, the authority they have in the personnel area. Do they, for example make effective recommendations to higher authorities on matters of salary adjustment, retention, promotion, tenure? Do they see themselves as primarily representatives of the department to the dean, or do they see their role as essentially that of representing the dean to the department? It can make a difference.

The method of selection and terms of appointment can also make a difference. Are chairmen elected for short terms or appointed for long terms?

The answers to these questions might provide some clues to the administrative agency as to which side of the fence chairmen belong.

But they are only clues and rather slippery ones at that. The supervisory duties of chairmen can be made to look insignificant or downright imperial, depending upon the interests of those making the arguments in a representation case. Since unions tend to believe that chairmen belong with their fellow worker colleagues on the shop floor, they emphasize the chairman's ministerial role. College administrations, on the other hand, tend to want the chairmen on their side, and they argue that the chairmen's supervisory responsibilities are very grave indeed. It is sometimes a case of blind men describing an elephant.

On a more practical level, the union most often believes that the chairmen will vote yes in the forthcoming representation election, and the administration fears that the union is correct.

Beyond considerations of strategic advantages or disadvantages are the views held by many college and university officials that if a union does win the representation election, the structure of governance will become so altered as to require chairmen to assume a tougher supervisory stance.

University presidents and assistant professors of sociology may never have been colleagues in the true meaning of that word, but it is a fiction that many of us believe in. And that belief causes us, at least on occasion, to sacrifice some of our special interests for the sake of the whole. Bargaining may be partial recognition of the mythical nature of collegiality. If this does happen, if it is to become a case of "us against them," then it is understandable that college and university administrations would want their management representatives present in the departments, irrespective of the possibly minor supervisory role chairmen may have performed in the pre-bargaining era. The rules will change and so, too, perhaps, will attitudes. Institutional management may want to assure itself as best it can that the chairman's loyalty will not conflict with loyalty to another institution that on occasion has other fish to fry.

The Election Campaign

Now let us assume that all those representation issues have been resolved, either by the parties themselves or by order of the administrative agency. The bargaining unit has been established. The next step is to select the bargaining agent, if any. And here again there might be some cause for dispute between the parties.

An example might be the timing of the election. If there are two competing unions, the petitioner might see an advantage in an early election while interest is high, while the intervener would prefer to wait until it can muster more support. The administration, of course, will attempt to calculate when it might be that pro-collective bargaining sentiment is at its lowest ebb and argue, sometimes for spurious reasons, that the election be held at that time.

There may also be disputes as to polling places and whether the campus mail and campus facilities should be used for electioneering purposes. If the parties cannot agree, the administrative agency will answer these questions for them.

Probably the most interesting question arising during the campaign from the administration's point of view is whether there sould be an effort to engineer a

"no union" vote, or whether it should follow a hands-off policy. I am assuming for purposes of discussion that the administration is not particularly eager to deal with a union. Clearly, a collective bargaining election does not cause an employer to surrender First Amendment rights. The employer is free to oppose the union (or unions) by written or spoken word.

Although it would probably be unwise to do so, an employer may, in a two-union contest, express a preference for one union over the other in a non-coercive way. It may not *treat* the two unions discriminatorily, however, or promise to be more generous to one than the other.

Nor may the employer in its endeavor to defeat the union use "threat of reprisal or force or promise of benefit" in its campaign oratory. This is an artful expression rather than a scientific one to be sure, and we have not built up enough case law in higher education to give it specific meaning. It goes almost without saying, however, that remarks that may have been made in innocence can sound ominous and coercive to employees. But still the employer *can* argue that collective bargaining would probably not be good for the faculty and the institution. It just can't threaten that bad things will follow if the faculty votes the union in or promise that good things will happen if it votes the union down.

Can the administration remain silent but encourage an *ad hoc* faculty organization opposed to collective bargaining to do its work for it? Such organizations do spring up during representation elections, and it may be that on occasion their role is decisive. Whether the administration is allowed to support these organizations, financially or otherwise, is a matter which, to my knowledge, has not been determined by an administrative agency or by the courts. My guess is that union adherents and opponents must be treated alike. Payments to a labor organization are, of course, unlawful employer interference. Payment to an organization opposed to unionization would, I think, be of dubious legality.

But even if an employer could legally lend support to an anti-bargaining faculty group, one might wonder about the wisdom of doing so. We know already that at least 30 percent of the employees in the unit are somewhat skeptical about the administration's assertion that the professoriate would probably do just as well, and might even do better, without a union. Otherwise all those professors wouldn't have signed all those cards. The knowledge that the administration had connived with a faculty group to defeat bargaining might easily push another 20 percent, plus one, over to the union's side, and that is all that is needed.

Indeed, there are those who question the wisdom of the administration making a stand of any kind during a representation election. The risk of being misinterpreted, therefore engendering anti-administration sentiment among the uncommitted, may be greater than the risk of silence.

Based on what we have seen of it so far, it might be possible to make a case that collective bargaining does higher education no good. But then the main arguments favoring collective bargaining for faculty have not centered on the wholesome effect it would have on educational quality. We have extended bargaining rights to faculty, not on the grounds that it would improve the teaching-learning environment, but because it was believed that it was a right that ought not be denied to the professoriate when that right is enjoyed by others.

Conclusion

These are the options open to the parties, or at least some of them. Whether a union or an administration "gets its way" on the uniting issue will depend in large part on the relevance of the facts.

XI. COMPENSATION AND ACADEMIC BARGAINING: NEW FINDINGS AND NEW DIRECTIONS

Robert Birnbaum

Chancellor, University of Wisconsin, Oshkosh

Introduction

Recent research on the relationship between collective bargaining and compensation levels in higher education has produced results which appear to be conflicting. Birnbaum's[1]* finding of a positive relationship based on comparisons of a matched sample of unionized and non-unionized institutions has been supported by the work of Morgan and Kearney[2] which examined similarly matched institutions using regression analysis. However, Brown and Stone[3] find a neutral or negative relationship between unionization and compensation increases by comparing growth rates in unionized campuses to national averages.

These apparently disparate results raise three significant questions. First, do the existing data make it possible to claim that collective bargaining causes changes in compensation levels in higher education? Second, to what extent are differences in the data due to methodological problems? And third, are the researchers getting different answers to the same questions?

Association and Causation

Although their conclusions differ, all three researchers report their major findings in terms of the association of variables. Morgan/Kearney, for example, report that ". . .collective bargaining in higher education is associated with increased faculty salaries and benefits," while Brown/Stone find that "faculty salary and compensation growth rates were not unusually high under collective bargaining." Birnbaum reported in 1974 that there was ". . .a relationship between participation in collective bargaining and faculty compensation increases, although it could not be determined whether the relationship was a causal one," and then in 1976 reported the relationship itself to be weakening.

All three thus appropriately treat their findings in terms of relationships and associations. However, despite disclaimers in Birnbaum's papers, and the fact that he was disposed to find that collective bargaining was *not* related to compensation increases,[4] readers of both his articles will find several words and phrases *implying* not only a positive relationship, but causality as well. Morgan/Kearney occasionally err in this fashion, as do Brown/Stone in reporting a neutral or negative relationship.

The distinction between relationship and causality, while obvious, is then often subtle enough to cause slips of the pen by researchers; the potential for honest misunderstanding by those in the media or at the collective bargaining table is even greater. But in the final analysis, there are no data in any existing study which can justify a statement to the effect that collective bargaining either

*Footnotes for this paper appear on page 72.

causes, or does *not cause*, compensation increases in higher education. Indeed, I would state that there are no economic studies that *can* be done to justify such a conclusion. All that has been examined to date is the possible existence of a *relationship* between these two institutional characteristics.

Methodological Problems

The second significant question deals with the research design and methodology used in the existing studies. The Brown/Stone paper presented at this conference[5] presents an analysis of the strengths and weaknesses of the various methodologies employed. Their concern for the possible effects of researcher bias in the selection of "matching" campuses in both the Birnbaum and Morgan/Kearney results is well taken, and the effects they report of transposing the matching institutions from each of these studies to the methodology of the other are disturbing.

They properly point out the potential problems of differences in regional distributions which affect both matching studies, but which are far more apparent in Birnbaum's work, and note that several institutions in Birnbaum's study, and more in Morgan/Kearney's work, were identified as unionized although they had no contract at the time of the studies. While the researchers cannot be excused for failing to confirm these data, it does point out the paucity of available data on bargaining and the treacherous ambiguity of much of the data that do exist.[6]

Two of these issues, the problems of matching and the related effects of regional distribution, are of particular interest. Matching is indeed a difficult process since there are few institutions that have identical counterparts. Had Morgan/Kearney and Birnbaum constructed a matrix into which each of the approximately 1,000 four-year colleges and universities listed in the AAUP surveys could be placed based upon even a limited number of relevant variables, and then randomly selected unionized and non-unionized institutions from the same cell for comparison. their results should have been the same, even though their matches were different. Using only control (public/private), region (nine identified by the Census Bureau), and level (universitiy/four year) as variables, the matrix would include an average of only 28 institutions in each cell, from which institutions could be selected *if* there were appropriate unionized and non-unionized institutions in the cell, *and* they could be matched on initial compensation.

This limitation on choice required tradeoffs which Brown/Stone argue will affect the final outcome. Is it better to match a college with another in the same region whose compensation level is different, or with one with the same compensation level which is not geographically proximate? Brown/Stone's analysis of the differences in Morgan/ Kearney's and Birnbaum's findings related to matching is flawed because they fail to consider the significantly different mix of public and private institutions in these two studies, but their argument is interesting enough to require further examination.

If we examine only the 12 unionized public, four-year colleges which were included in *both Birnbaum's and Morgan/Kearney's matching studies*, the effects of tradeoffs in matching are apparent. In 1969-70, the 12 common unionized

institutions had a mean compensation of $12,050. In comparison, while Birnbaum's 12 matched non-unionized institutions had a compensation level of $12,008, or $42 lower, Morgan/Kearney's matching group had an average compensation of $13,161, one thousand dollars higher. In terms of initial compensation levels, then, Birnbaum's match was far better than Morgan/Kearney's, and some of the differences in their findings may be related to this discrepancy in initial salary matching. In any case, Birnbaum's findings cannot be dismissed because of inadequacies in matching compensation levels in his study.

However, as Brown/Stone point out, there was also a difference in the degree to which these two studies matched institutions by geographic location. Although neither study matched perfectly, the regional distribution of Morgan/Kearney's non-unionized institutions was closer to that of their unionized matches than was Birnbaum's.

Brown/Stone argue that these regional differences may account for some of the differences Birnbaum later found between compensation levels in the two groups. Further analysis of Birnbaum's data shows that, while the compensation levels of his non-unionized four-year, public institutions in 1969-70 were what would be expected from a group of similar institutions with the same regional distribution, the compensation levels of his unionized matches were on the average about $900 below those of similar institutions in their respective regions. In other words, two institutions could be matched on compensation level, but if not also geographically matched one could be above and the other below the compensation level for their respective regions. The increased compensation levels which Birnbaum later found in unionized institutions, it could be argued, may to some extent have been due to market pressures which would have existed even in the absence of bargaining, moving them upward toward the average compensation levels of their region.

While this is an interesting hypothesis, no data have been presented to support it, and an analysis of the 35 *non-unionized* institutions in Birnbaum's study, which presumably would have been subject to the same market forces had they existed, fails to confirm it. Although on average this group of institutions had compensation levels roughly comparable to their regional means, the variance was quite large with about half of them below their regional means in 1969-70, and half above. There were 19 institutions below their regional means in 1969-70, with average compensation levels 7.4 per cent below those of their regions.

By 1974-75, 16 of these institutions were still below those means, and the average difference for all 19 had reminded approximately the same at 7.2 per cent below their regional means. If regional market factors had been functioning as Brown/Stone suggest, it would be expected that the difference between the sample means and the regional means would have decreased significantly, rather than having remained stable.

There are several reasons why regional differences do not appear to have had an influence on Birnbaum's data. First, the nine census bureau regions may aggregate data at too high a level, so that differences by state and other subunits within regions may be greater in some cases than the differences between regions themselves.

Second, while it can be assumed that institutional compensation expectations develop in relationship to some external criteria, it is not at all clear that these criteria are necessarily related to the compensation levels of other colleges or universities in their regions. It may be that there are other organizational sets in which institutions place themselves for the purpose of salary comparisons. For example, some community colleges may use percentage increases in contiguous school districts as their referents, while some public college systems may base their salary expectations on percentage changes achieved by other state employees outside the educational system. Still other institutions may have inter-institutional arrangements crossing regional boundaries such as common athletic conferences, which define the organizations with which they compare themselves for compensation purposes.

Brown/Stone's suggestion that regional differences may account for a considerable part of the compensation increase seen in Birnbaum's sample of unionized institutions, therefore, remains only an intriguing hypothesis which cannot be fully evaluated without further study. But the question still remains: if there is no evidence that institutions in Birnbaum's study were improperly matched by compensation level, and no evidence that regional differences in the sample may have distorted his results, how can the apparent differences between Birnbaum's and Brown/Stone findings be explained?

Questions and Answers in Research

This leads to the third and most crucial question: what questions were the researchers asking? Different questions will, of course, yield different answers, and while each of these studies was concerned with discovering whether there is a relationship between bargaining and compensation, the questions asked by Brown/Stone were not the same as the questions asked by Birnbaum. Brown/Stone took institutions after they had signed a contract and compared their salary increases each year thereafter with the increases of a comparable group of institutions across the country. They asked, "Once institutions are unionized, how do their compensation increases each year compare with those at other institutions?"

Birnbaum asked a much different question. He took institutions that were unionized in 1972-73 and matched them with non-bargaining institutions based on their compensation levels in 1968-69. He then asked, "In 1968-69 the compensation levels of unionized and non-unionized institutions in the sample were identical; how different are they in 1968-69 plus x?"

Naturally, questions are neither right or wrong – they are just more or less useful. The relative utility of these two different perspectives from which data were collected and analyzed cannot now be determined with certainty, although each has both strengths and weaknesses. One of Brown/Stone's weaknesses was that they ignored changes related to bargaining that may have occurred prior to signing the first contract; one of Birnbaum's was that he ignored the date upon which an institution began bargaining, and aggregated data from institutions which had bargained for various lengths of time. These differences in approach may partially explain their differing conclusions.

To examine this possibility, Birnbaum's institutional data were re-analyzed

and compensation levels were calculated for every year between 1968-69 and 1975-76, using AAUP reports. To assure that only comparable groups of reasonable size would be included, this re-analysis was done only for public two-year and public four-year institutions.

Two-Year Colleges

Two-year public colleges are of particular interest in considering unionization and changes in compensation for several reasons. Not only do they represent a very significant portion of the higher educational system (with 43 per cent of all public enrollments in 1976)[7] but they were also the first group of institutions to engage in collective bargaining and represent a large proportion of all unionized institutions.

In addition, while they are often subject to the jurisdiction of state agencies, their compensation levels are likely to be established by boards of control reflecting local interests and conditions, and bargaining is likely to encompass single institutions rather than systems.

The two-year colleges selected for this study, based on their salary levels in 1968-69, showed an additional characteristic: of the four institutional categories initially examined, they were the only ones that indicated that compensation in unionized institutions might not only go up compared to those of their non-unionized counterparts, but down as well. Published data indicated that the compensation of 20 matched pairs which was almost identical in 1968-69 was higher in 1972-73 by $663 in unionized colleges.

TABLE 1

Compensation in Bargaining & Non-Bargaining Two-Year Public Colleges 1968-69 to 1975-76 (N = 20 Pairs)

	Year							
	1968-69	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76
Bargaining	12,035	13,189	14,675	15,611	16,635	17,850	19,289	20,636
Non-Barg	12,007	12,959	14,032	15,067	15,972	17,301	19,087	20,741
Difference	28	230	643	544	663	549	202	−105
% Diff Favor Barg	0.2	1.8	4.6	3.6	4.2	3.2	1.1	−0.5

This difference favoring unionized institutions was reduced to $202 in 1974-75, because during the two-year period 1973-74 and 1974-75 compensation increased by only 16 per cent at bargaining institutions compared with 19.5 per cent at non-unionized community colleges.[8]

Changes in compensation levels by year over the period from 1968-69 to 1975-76, showing a curvilinear trend, indicate continued movement in this direction, as shown in Table 1. Small differences starting during the first two years peak and stabilize for the following four years at between 3.2 and 4.6 per cent favoring the unionized campuses. They then decline during the next two years

and return once more to approximately zero by 1975-76. These data evidence the same problems acknowledged earlier; they do not indicate when the contract was consummated at each unionized institution, and institutions are not well matched by region. It is interesting to note, however, that of the ten pairs in which East and West Coast institutions are compared, 1975-76 salaries are higher for East Coast institutions in five cases, and for West Coast in five.

Since Brown/Stone do not consider two-year institutions, no comparison can be made with their data. However, the curvilinear relationship seen for this set of colleges suggests that time may play a significant role in other institutional categories as well.

Four-Year Colleges

Possible reasons for differences in the Birnbaum and Brown/Stone findings concerning four-year public institutions have already been presented. Brown/Stone's data, quite properly for the methodology they employ, are analyzed as of the effective date of the contract.

The Birnbaum data began in 1968-69, even though in many cases the initiation of bargaining did not take place for years afterward. We thus have the possibility that some differences seen in bargaining institutions occurred before bargaining began, rather than afterward. To examine this possiblity, the salary levels of 35 matched pairs of four-year public institutions were compared by year from 1968-69 to 1975-76, with the results shown in Table 2.

TABLE 2

Compensation in Bargaining & Non-Bargaining Four-Year Public Colleges 1968-69 to 1975-76 (N = 35 Pairs)

	Year							
	1968-69	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76
Bargaining	12,156	13,266	14,339	15,233	16,403	17,608	19,563	20,605
Non-Barg	12,128	12,994	13,580	14,155	15,184	16,378	17,844	19,208
Difference	28	272	759	1,078	1,219	1,230	1,719	1,397
% Diff Favor Barg	0.2	2.1	5.6	7.6	8.0	7.5	9.6	7.3

As with the two-year colleges, compensation differentials in four-year colleges start at zero and rapidly rise to a plateau. Whether the reduction of the differences from 9.6 per cent in 1974-75 to 7.3 per cent in 1975-76 represents a minor adjustment in the plateau level, or the beginning of a trend back to equal salary levels as in the two-year institutions remains to be seen.

However, the data do perhaps offer some insight into the differences in the Birnbaum and the Brown/Stone findings. By 1970-71, the initial year for data collected by Brown/Stone, Birnbaum's 35 matched institutions, which initially had no salary differential, already had a differential of $759, or 5.6 per cent, favoring unionized institutions. This means that, had Birnbaum analyzed his data

only from 1970-71 to 1975-76, the same period of time encompassed by Brown/Stone, he would have found unionized institutions in his sample increasing compensation levels by $6,266, or 43.7 per cent, and non-unionized institutions increasing by $5,628, or 41.4 per cent. This difference of only 2.3 per cent favoring bargaining institutions represents an annual rate of 0.4 per cent difference each year during the five year period, consistent with the 0.3 to 0.6 per cent per year advantage in collective bargaining institutions for professor through assistant professor found by Brown/Stone. Thus, for comparable periods of time, Birnbaum's and Brown/Stone's findings are almost identical, even though their methodologies differ.

It is still true, however, that Brown/Stone only examine data for each institution as of the effective date of the contract, while Birnbaum's data do not make this differentiation. To see the possible effects of this difference, data were examined only for 23 pairs of four-year colleges for which collective bargaining began in 1971[9] and their non-unionized matches.

The results of this comparison are shown in Table 3. As in Table 2, the comparisons of the 23 pairs begin with no salary differentials, rapidly climb to a plateau favoring collective bargaining institutions, and then show a decline which may reflect either a minor fluctuation or the beginning of a reversal of the trend.

TABLE 3

Compensation in
Bargaining & Non-Bargaining Four-Year Public Colleges
1968-69 to 1975-76 (N = 23 Pairs)
With Collective Bargaining Contract Signed in 1971

	Year							
	1968-69	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76
Bargaining	12,694	13,834	14,900	15,738	17,080	18,341	20,586	21,727
Non-Barg	12,655	13,473	13,852	14,476	15,587	16,933	18,592	20,019
Difference	39	361	1,048	1,262	93	1,408	1,994	1,708
% Diff Favor Barg	0.3	2.9	7.6	8.7	9.6	8.3	10.7	8.5

If it is assumed that 1971-72 is the year in which differences specifically related to signing the contract should have appeared, the time period in Table 3 can be divided into two sections. One, from 1968-69 to 1970-71 (pre-bargaining), describes changes prior to the contract, and the other, from 1970-71 to 1975-76 (post-bargaining), describes subsequent changes. Using these two time groupings, it can be seen that during the pre-bargaining stage unionized institutions increased their compensation levels by $2,206, or 17.4 per cent, compared to non-unionized increases of $1,197, or only 9.5 per cent.

However, in the post-bargaining period, the increase of $6,827, or 45.8 per cent, for unionized institutions was only slightly higher than the $6,167, or 44.5 per cent, increase of non-unionized campuses. This 1.3 per cent difference over a five year period reflects a growth rate of less than 0.3 per cent per year favoring unionized institutions, extremely close to the Brown/Stone data.

When the unionized Pennsylvania campuses are excluded from the sample, following the Brown/Stone finding that they appeared to have unusually large compensation increases compared to non-bargaining institutions, the 1975-76 compensation levels of the remaining institutions are a fraction of a per cent higher at *non-unionized* campuses. This insignificant difference results from greater increases for unionized institutions during the pre-bargaining period, followed by greater increases at non-unionized campuses during the post-bargaining period. The latter finding is, of course, consistent with the negative relationship found by Brown/Stone between bargaining and compensation changes.

Unusual increases in Pennsylvania institutions, acknowledged by Brown/Stone in their study, are also confirmed by these data using Birnbaum's matching technique.

Conclusions

Although Brown/Stone and Birnbaum appear to arrive at opposite conclusions in their studies, their differences may depend to a great extent upon the periods of time considered rather than upon methodology.

When comparisons are made between growth rate of compensation in matched unionized and non-unionized institutions *from the inception of bargaining*, there does not appear to be any relationship between unionization and increased compensation, consistent with the conclusions of Brown/Stone. Whether Brown/Stone's concern over regional differences and quality changes, or the inherent problems of matching seen in Birnbaum's study are of little importance, or whether they are real problems confounded or masked by other variables not yet considered, can only be determined by further study.

Data from 23 pairs of institutions showing yearly changes during the pre-negotiation period suggest that there *may* be an anticipatory reaction to collective bargaining impacting on compensation levels long before bargaining begins. Such increases, perhaps made in an effort to forestall the initiation of unionization, may explain the differences favoring unionized institutions found in the matching technique which selects campuses for inclusion in the study *before* bargaining begins.

However, other explanations are also plausible. Since these 23 unionized institutions are all members of one of three contiguous state systems, the compensation patterns may be caused by regional political factors unrelated to bargaining. Alternatively, it can be argued, even if available data do not provide supporting evidence, that they really reflect changes based on movement toward regional compensation averages, or that they are statistical artifacts related to the phenomenon of regression.

This latter possibility exemplifies the extreme difficulty in attempting to establish causal relationship between unionization and compensation. The fact that an institution begins with a compensation level below the regional mean, and after unionizing has moved toward that regional average, does not necessarily mean that normal market forces would have led to the increase even had bargaining not been present. It is possible that such an institution may have traditionally received low compensation, perhaps as a matter of policy; that this was one of the forces which motivated the unionization movement; and that

improvement to the regional compensation mean represents a signal union victory that could not have been otherwise achieved.

These various explanations suggest that attempts to determine the impact of unionization upon compensation levels in higher education merely by economic comparison, either with matched institutions or large groups of institutions, may not in the long run be the most useful way of addressing the issue. Data drawn from the more experienced two-year colleges suggest that early increases in unionized institutions may in the longer run be offset by later losses.

Do local boards of control trade off higher salaries in earlier stages of the process, and later engage in tough economic bargaining as they become more experienced? Four-year public college data indicate the possibility of overall increases related to the bargaining process, with differences during the pre- and post-negotiation states. What political factors may account for this?

In all groups, aggregated data may conceal more than they reveal, because some campuses show relative increases and some decreases regardless of their bargaining status. The question is why, and the answers perhaps can be best sought from the perspectives of disciplines other than economics. Regional, qualitative or institutional level differences that appear related to compensation changes may themselves be surrogates for other variables as yet unconsidered.

Recent increased attention to the relationship between unionization and compensation has been useful. Although no study done to date can be said to be conclusive, we are learning more about the number of variables and interactions which appear to enter into the relationship in some way, and preparing the ground for more complete and sophisticated analyses.

While these studies may continue to be important, I would suggest that in the final analysis explorations from the perspectives of political science, sociology and social psychology may be a more productive way of looking at the impact of unionization upon compensation.

In particular, little attention has been paid, and almost nothing written, about the bargaining and negotiation processes which affect compensation issues at the table itself. I believe that this change of research direction holds the greatest future promise for dealing with the issue of causation, at least in part because it will change the question from, "Does unionization result in increased compensation?" to, "Under what conditions does collective bargaining affect compensation?"

Footnotes

[1]Robert Birnbaum, "Unionization and Faculty Compensation," *Educational Record*, 55:29-33, 1974; and "Unionization and Faculty Compensation: Part II," *Educational Record*, 57:116-18, 1976.

[2]David R. Morgan and Richard C. Kearney, "Collective Bargaining and Faculty Compensation: A Comparative Analysis," *Sociology of Education*, 50:28-39, 1977.

[3]William W. Brown and Courtenay C. Stone, "Academic Unions in Higher Education: Impacts on Faculty Salary, Compensation and Promotions," Working Paper No. 76005, Department of Economics, California State University, Northridge.

[4]This is clearly articulated in Robert Birnbaum, "The Effects of Collective Bargaining on Faculty Compensation in Higher Education," *Collective Bargaining in Higher Education*, Proceedings of the National Center for the Study of Collective Bargaining in Higher Education, Baruch College, CUNY, 1974. Note how even the name of the article inadvertently misrepresents the possibility of a causal relationship.

[5]William W. Brown and Courtenay C. Stone, "Faculty Compensation under Unionization: an Analysis of Current Research Methods and Findings," Working Paper No. 77501, Department of Economics, California State University, Northridge.

[6]There is at present no comprehensive listing of all unionized institutions with the date a representative was selected, the date the contract was signed, and the effective date of the contract. Existing lists of unionized campuses often confuse these dates.

[7]"Opening Fall Enrollments in 1974, 1975 and 1976," *Chronicle of Higher Education*, February 22, 1977, p. 6.

[8]Robert Birnbaum, "Unionization and Faculty Compensation: Part II," *Educational Record*, 57:116-18, 1976.

[9]The unionized institutions in this sample include only state colleges in New York, Pennsylvania and New Jersey. The dates of their contracts were August 31, November 2 and February 5, 1971, respectively, and their effective dates are not known. For the purpose of this comparison, 1971-72 is taken as the first year that bargaining effects related to signing the contract could be noticed.

XII. FACULTY COMPENSATION UNDER UNIONIZATION: CURRENT RESEARCH METHODS AND FINDINGS

William W. Brown and Courtenay C. Stone

California State University, Northridge

Introduction

The impact of academic unions on faculty salaries, compensation and promotions has remained a continuing source of controversy since the emergence of collective bargaining in higher education.[1]* While the comparatively brief history of such union activity, and the absence of a general theory of unions in a not-for-profit context, have contributed to this controversy, certainly a major cause of the widespread diversity of opinion surrounding the effects of faculty unions has been the anecdotal nature of past research.[2] Ignoring the controversy generated by differing philosophical viewpoints, it is not entirely surprising that disagreements exist amongst "neutral" observers when research consists of "an unsystematic mix of interviews, case studies, contract analysis and intuition."[3]

What is surprising, perhaps, is the widely disparate findings reported by three recent empirical studies designed to systematically assess the influence of collective bargaining on faculty compensation.[4] The radical differences in the conclusions of these studies are clearly demonstrated in the following quotations:

Birnbaum[5]

> Between the academic years 1968-69 and 1972-73, compensation at unionized campuses increased 35.5 percent, compared to 28.2 percent at nonunionized institutions–a difference of 7.3 percent. Comparable differences between academic years 1972-73 and 1974-75 were 17.3 percent and 17.2 percent respectively, a difference of only 0.1 percent. . . .
>
> In 1974-75, institutions with collective bargaining paid faculty members an average salary of $19,803, and institutions without collective bargaining paid an average of $18,659. . .The difference of $1,144 was statistically significant at the 0.01 level of confidence.

Morgan/Kearney[6]

> . . .*collective bargaining in higher education is associated with increased faculty salaries and benefits.* The matching of 46 pairs of union and nonunion schools reveals that, as of 1974-75, collectivized faculties have an average $625 differential over their unorganized counterparts. Regression analysis also indicates that unionized faculties should receive greater monetary benefits than their nonunionized colleagues. When compensation change (from 1969-70 to 1974-75) is employed as the dependent variable, the union/nonunion measure is the strongest single influence in the equation.

Brown/Stone[7]

> Faculty salary and compensation growth rates were not unusually high under collective bargaining. . . .In general, *there appears to be no significant impact on salary, compensation and promotions associated with the adoption of collective bargaining by college and university faculty.*

*Footnotes for this paper appear on page 90.

Because collective bargaining's influences on salary and compensation are the issues most susceptible to empirical inquiry, and because these studies presently represent the major research efforts in the field, it is crucial that their discrepancies be explained before the broader implications of academic unions are investigated. The purpose of this paper is to determine whether the apparent differences in these studies are real and whether their real differences are apparent.

Research Objectives and Methods

These three studies share a common objective: to empirically isolate the *association* between academic unions and changes in faculty compensation. They use similar data and cover comparable time periods. In addition, each of the studies correctly emphasizes that the results should not be interpreted as demonstrating *causality*. In the absence of a general theory specifying empirically verifiable propositions about union activity, research is necessarily limited to searching out stable statistical relationships. These studies are, therefore, methodologically consistent with the extensive empirical research related to the economic effects of unions in general.[8]

The usefulness of such studies rests crucially on the extent to which all influences other than union status are held constant. If this *ceteris paribus* condition is not met, it is impossible to assess union-related effects because union status may mask the effects of other relevant variables. The three studies employ two different techniques to control for the effects of confounding variables when comparing faculty compensation at collective and noncollective bargaining campuses. Two of the studies, Birnbaum and Morgan/Kearney, adopt a method based on the matching of each unionized campus with a specific nonunionized campus. Brown/Stone, on the other hand, compare compensation at unionized campuses to national average levels. Both of these methods of statistical control are, *a priori*, acceptable for isolating union effects. If successfully applied, both should yield similar results. We will demonstrate that the primary reason these studies reach dissimilar conclusions is due to the differing degrees of success with which they actually implement their basic research design.

Additionally, analysis of academic collective bargaining requires a determination of the precise point in time at which its influence initially surfaces. The three studies differ in their specification of the onset of unionzation's impact. Brown/Stone explicitly identify the timing of unionization's initial impact on compensation at each of the union campuses as being the effective date specified in the initial union contract. The other two studies leave unspecified the precise timing of the initiation of collective bargaining's impact on compensation at each campus. This difference in the time period associated with the union impact on compensation at each campus is also responsible for the dissimilar conclusions reached by the studies. The relationship between the differences in the studies' research techniques and their differing conclusions is detailed in the following sections.

Ceteris Paribus by Matching: Birnbaum and Morgan/Kearney

A summary of Birnbaum's and Morgan/Kearney's results comparing average compensation of union and matched nonunion four-year colleges and universi-

ties is presented in Table 1. Though Birnbaum's observation period begins one year earlier than Morgan/Kearney's and the number of unionized campuses in his study (50) exceeds slightly Morgan/Kearney's (46), the results of the two studies are comparable. Specifically, average compensation levels at campuses which unionized during the period of observation grew more rapidly than at the matched campuses which did not unionize. Consequently, both studies find that the average level of compensation at unionized schools in 1974-75 exceeds that at the matched nonunionized campuses.

Because empirical studies, due to the nature of the methodology of scientific inquiry, should always reduce the chances of "discovering" effects which do not exist, we attempt, initially, to determine to what extent the observed positive associations between compensation and unionization (Table 1) are spurious. Consider, first of all, the *actual* matching method used by these studies to control nonunion effects. The 50 collective bargaining campuses in Birnbaum's study were matched with non-collective bargaining campuses as follows:[9]

> The AAUP reports were reviewed . . . to find . . . a nonunionized matching institution with the same control (public, private, church-related), program level (university, four-year college without master's program, four-year college with master's program . . .) and compensation level in the 1968-69 base year. Union and nonunion institutions were matched on the basis of size (as measured by the number of full-time faculty) and geographic location whenever these did not conflict with the three primary criteria.

Morgan/Kearney's "study generally follows the matching procedure developed by Birnbaum . . . . [M]atches were found . . . based on the criteria of AAUP Category and compensation scale, control (public or private), geographical proximity or cultural similarity and institutional size."[10]

Although it would appear that both studies use essentially similar criteria to match nonunion campuses with their respective samples of unionized schools, the results suggest the contrary. A total of 22 distinct collective bargaining campuses are common to both samples, yet only *one* of these is matched with the same nonunion campus. The other 21 are matched with different nonunion campuses, despite the presumably similar matching criteria.

This illustrates a serious difficulty in implementing the matching methodology. Results can differ because *matchers* have different subjective impressions regarding which campus "best" meets the objective matching criteria.

Reconsider Table 1. In 1974-75 Birnbaum finds a positive union differential of $1,500 while Morgan/Kearney find only a $600 difference. Suppose that Morgan/Kearney had chosen to "match" their unionized campuses with Birnbaum's nonunionized sample. The 1974-75 Morgan/Kearney differential would have been zero ($18,500 - $18,500). Alternatively, if Birnbaum had used Morgan/Kearney's nonunion matching, his differential would have been $2,100 ($20,000 - $17,900). Is the true difference $0? $600? $1,500? $2,100? Perhaps even negative? It is difficult to determine when there is disagreement about the "proper" matches.

However, even if there has been *complete* agreement on the matching of union and nonunion campuses, the results would still, in fact, reflect a "matching bias." The objective of matching, again, is to hold the effects of confounding variables constant. With multiple matching criteria, the researcher is forced to

choose the "best" match. It is this necessity to trade off between conflicting criteria that produces the subjectivity in judgment inherent in the process of matching. Consequently, results will depend critically on the nature of the "matching bias."

Consider, specifically, that in both studies the average compensation at collective bargaining campuses exceeds the level at matched nonunion campuses in 1974-75. This result is partially explained by the failure to match closely on the basis of geographical regions. Table 2 illustrates the significant differences between the geographical distributions for the union and nonunion samples within each of the two studies. Because regional faculty compensation varies considerably, matching across geographical regions will create differences due solely to these variations.

The impact of this bias on the conclusions presented in the Birnbaum and Morgan/Kearney studies can be demonstrated as follows. Suppose that faculty compensation at each of their union and nonunion campuses were equal to its respective regional average.[11] In that case, differences in the average compensation between union and matched nonunion campuses would be attributable only to differences in the respective regional distributions. Table 3 presents the average compensation levels based solely on the sample regional distributions (Table 2) and the prevailing regional average compensation levels for the various years shown.

In 1974-75, as shown in Table 3, average compensation associated with the collective bargaining regional distribution exceeds that for the nonunion regional distribution in both studies. Compare these to the corresponding results in Table 1. In particular, of the $1,500 difference found by Birnbaum in 1974-75 (Table 1), $900 is explained merely by regional variation between the union and nonunion samples (Table 3). Similarly, of the $600 difference found by Morgan/Kearney (Table 1), $100 is explained by regional variation (Table 3). Thus, the observed positive union compensation differentials in 1974-75 shown in Table 1 are not surprising. By and large, union campuses are located in the higher salaried regions when compared to their matched nonunion campuses.

The previous discussion should cast doubt on the extent to which unionization is associated with the 1974-75 compensation differences Birnbaum and Morgan/Kearney observe. Even granted this, however, the relatively higher compensation growth rates experienced by union campuses (Table 1) still appear to support the interpretation that unionization affected relative compensation levels. From 1968-69 to 1974-75, Birnbaum finds the average gain in compensation levels at union campuses is $7,400 (an annual growth rate of 8.0 percent per year) whereas it is only $5,900 (6.6 percent per year) for nonunion campuses. The respective gains found by Morgan/Kearney for the period 1969-70 to 1974-75 are $5,600 and $4,800. However, these results, again, require additional interpretation. In fact, it is quite plausible that they simply illustrate the phenomenon of "regression toward the mean."

Compare, again, Tables 1 and 3. In both studies, faculty compensation at the collective bargaining campuses are relatively farther from (below) their respective regional means than are the matched nonunion compensations. In Birnbaum's study, the 1968-69 union average compensation is 5.3 percent below the

average compensation for schools with a comparable regional distribution. Birnbaum's 1968-69 nonunion average compensation is 2.3 percent below the average for schools with the same regional distribution. Proportionately, then, Birnbaum's union campuses are more than twice as far from their mean levels as are the matched nonunion campuses.

Morgan/Kearney's results are similar, in this respect, to Birnbaum's. In 1969-70 their union schools are 7.9 percent below the corresponding 1969-70 regional average. The nonunion schools, however, are only 5.8 percent below the average for schools with the same regional distribution.

Thus, for the unionized campuses in both studies, normal market forces, which tend to equalize net pay across similar institutions, would have produced (on average) greater increases in pay than those that occurred at the nonunion schools. That is, to the extent the relatively low initial compensation levels at campuses that subsequently unionized did not reflect, for example, lower quality levels but rather reflected normal random variation in compensation, then the observed differences in growth rates between the union and nonunion campuses become attributable, in part, to the workings of the market for academicians. Though labor markets do not adjust instantaneously, or "perfectly," in a world of uncertainty, the normal bargaining between employers and employees eliminates, over time, unusually low, or high, relative salaries among similar employers.

If, for example, salaries are unusually low at some institution, the normal movement of its faculty to higher paying alternatives, and its difficulties in attracting equally qualified new faculty, inform administrators as to the advisability of raising salary levels. Therefore, if Birnbaum's and Morgan/Kearney's matching of union and nonunion schools was such that both groups experienced comparable changes in quality over time, the greater growth in compensation levels at campuses that adopted collective bargaining may reflect, in part, the fact that their average compensation levels were relatively low initially.

At this point, it should be clear that the positive associations between faculty compensation and unionization found by Birnbaum and Morgan/Kearney are arguably spurious. These *observed* union compensation differentials have been affected by biases introduced through the matching process and by the normal adjustments in the academic marketplace.

The Impact of Quality: Morgan/Kearney

There would appear to be general agreement that faculty compensation and institutional quality are positively correlated. As a consequence, attempts to assess the influence of collective bargaining on faculty compensation must carefully control for the impact of quality variation (both terms of levels and rates of change) on compensation. Failure to do so will seriously weaken any conclusions obtained. A good example of both the importance of quality on compensation, and the problem created by incorrectly specifying its influence, is shown in Morgan/Kearney's regression analysis. They begin their analysis by stating:[12]

> The most satisfactory method of assessing the impact of collective bargaining on faculty compensation is to systematically control for the potential effects of other forces on the levels of compensation. We now turn to an

analysis in which we employ stepwise multiple regression techniques to estimate compensation levels for an initial period (1969-70) and for a period five years later (1974-75). We also present a third equation using the same independent variables to predict the five-year percentage increase in average faculty compensation.

The results of their analysis are presented in Table 4. The importance of an institution's quality on the average level of its compensation is clearly indicated by the first two regressions. Even though Morgan/Kearney's quality variable is the 1967 Gourman rating, and thus a measure of relative quality *prior* to the period under consideration, it was entered first (roughly, the most important explanatory variable) in the regressions for compensation levels. Of course, actual institutional quality was changing over the period. It is not surprising, then, that the explanatory power of the 1967 relative quality level would fall in their regression for the later year. Morgan/Kearney find, though quality is still entered first in the 1974-75 regression, its contribution to R^2 is reduced by about 30 percent (.52 on the 1969-70 versus .37 in the 1974-75). Nevertheless, in the 1974-75 regression, quality accounted for more than half the R^2 associated with all six independent variables. That an institution's quality is important in determining faculty compensation levels is hard to dispute. Certainly these results, alone, indicate the necessity to control for changes in relative quality before associating changes in compensation levels with collective bargaining.

Now consider Morgan/Kearney's third regression where the dependent variable is the percent change in compensation from 1969-70 to 1974-75. Here we find the 1967 relative quality level with a significantly *negative* coefficient, and the union/nonunion dummy becomes the single most important explanatory variable. How can these results be reconciled with the first two regressions where the two variables' relative importances were just reversed?

The explanation is simple. The effects of quality *changes* are not being held constant in the regression for percent increases. If quality is important in explaining compensation levels (as shown in the first two regressions), then certainly relative *changes in quality* are important in explaining *changes in compensation levels*. If collective-bargaining campuses were experiencing greater increases in quality than the nonunion campuses, the union/ nonunion coefficient in the third regression would overstate the effect of unionization because changes in quality are not explicitly accounted for in regression 3.

Is there reason to believe that union campuses did experience greater increases in quality? Table 5 presents some direct evidence that union campuses in the Morgan/Kearney study had, in fact, larger "quality gains" than did the nonunion campuses from 1969-70 to 1974-75. The average number of professional accreditations in each year, for each subset of campuses, was determined by consulting *Accredited Institutions of Higher Education* for the years shown. The average number of professional accreditations at nonunion campuses in 1969-70 was 20 percent higher than that for the union campuses. By 1974-75, this had fallen to only 9 percent. Alternatively, the average number of professional accreditations had increased, over this period, by 24 percent for the nonunion campuses, but by 37 percent for the union campuses.

If we accept the number of professional accreditations as one measure of quality, this is evidence for two propositions regarding quality: (a) quality at

both sets of campuses had increased over the period, and (b) the collective bargaining campuses were initially of lower quality than the nonunion campuses, but made relatively greater quality increases. Without some such measure of quality *changes*, Morgan/Kearney's regression analysis of the percent change in compensation is difficult to interpret. Their union/nonunion variable is a surrogate for quality changes as well as union influence and therefore does not isolate the effects of unionization.

There is evidence, however, in Morgan/Kearney's analysis that is consistent with the earlier discussion about how market forces tend to equalize, over time, compensation at similar institutions. Consider regression equation 3 in Table 4. Note that the regression coefficient for the percent change in compensation from 1964-65 to 1968-69 is significantly negative.[13] This indicates that "unusual" growth rates in compensation of these schools did not persist over time. Those schools with high (low) growth in compensation in the initial period tended to have low (high) growth in the subsequent period which confirms the previous analysis regarding how the academic labor market normally operates.

Consider also the significantly negative coefficient for the 1967 quality level in regression 3. Morgan/Kearney provide no explanation for this puzzling result. Yet this result is explainable if the union/nonunion dummy in this regression is merely a proxy for the observed quality *changes* which occurred over the period. In this case, we would expect the coefficient for *1967* quality level to be negative. Those schools which initially had high (low) relative quality in 1967 would tend to show relatively smaller (larger) subsequent quality gains, and thus smaller (larger) gains in average compensation.

The above analysis, based on Morgan/Kearney's regression results, clearly demonstrates the importance of quality variation in explaining compensation variation. Unfortunately, their regression results do not provide unambiguous evidence on the association between unionization and faculty compensation.

The Timing of Unionization's Impacts

A consideration important to all research addressing the issues of collective bargaining is the identification of the onset of its impacts. The three studies do this differently and this accounts, also, for the lack of similarity in their findings. Brown/Stone identify the onset of compensation impacts with the effective date of an institution's initial contract. Birnbaum and Morgan/Kearney, on the other hand, leave unspecified the exact timing, but assume instead that the time period under study traps the actual onset.

It is perhaps an open question whether the effective date of the initial contract is, in fact, coterminous with the onset of unionization's effects on compensation. While most would agree that it is a good first approximation, others could argue that administrators may, by increasing compensation *prior to a bargaining election*, attempt to reduce the incentive to unionize. Yet others feel that the initial results of bargaining will be characterized by substantial inexperience on the part of the faculty bargainers, and only after they have "learned the ropes" will major effects surface. Whatever the speculation, without a precise specification of exactly when the impacts occur, it is impossible to judge whether the time period considered actually traps any union-induced dif-

ferential impacts. Consequently, changes in compensation levels for the period will not be uniquely associable with collective bargaining.

Even if there is a precise specification, however, difficulties can still arise with the matching method as used by Birnbaum and Morgan/Kearney. To illustrate this point, suppose the onset of unionization's impacts had been identified with the effective date of each campus' initial contract in the Birnbaum and Morgan/Kearney studies. Table 6 gives the time distribution of these dates for the union campuses in both studies.

In the Birnbaum study a large majority of the unionized campuses had contracts covering most of the period under study. The average number of years of collective bargaining experience for Birnbaum's union campuses is 3.5. For the Morgan/Kearney union campuses, the situation is much different. Twenty-two percent had no experience at all with union-negotiated compensation levels; 16 percent had but one year of salary determination under unionization. Morgan/ Kearney's union campuses averaged 2.3 years of experience with collective bargaining. However, because both studies cover a time period longer than that associated with unionization's impacts, the greater growth in compensation they find at union campuses over the entire period may not accurately reflect union activity.

Consider Figure 1 which illustrates possible time paths for compensation levels. Suppose that, on average, nonunion campuses start at A and end at B. Additionally, suppose union campuses also start at A but, rather than ending at B, they end at C. That is, as Birnbaum and Morgan/Kearney find, let there be a net difference in compensation growth at unionized campuses over the observation period equal to the vertical distance between C and B. Does this signify that unionization has increased compensation levels? Not necessarily.

Though perfectly matched as of the beginning of the period, if the union schools, on average, had traveled the path ADC, then the difference between C and B understates the union impact on compensation. Alternatively, if the path had been AEC, overstatement of the union influence will occur. Unless there is information about actual post-unionization compensation growth, it is simply impossible to determine the true association between collective bargaining and compensation levels. The actual compensation growth at the unionized campuses over the observation period is a mix of that which occurs over both the preunion and union subperiods. Thus, even with perfect matching, comparisons of compensation growth at unionized campuses over the entire observation period will, in general, be an ambiguous indicator of collective bargaining's effects.

Ceteris Paribus and the Use of National Averages: Brown/Stone

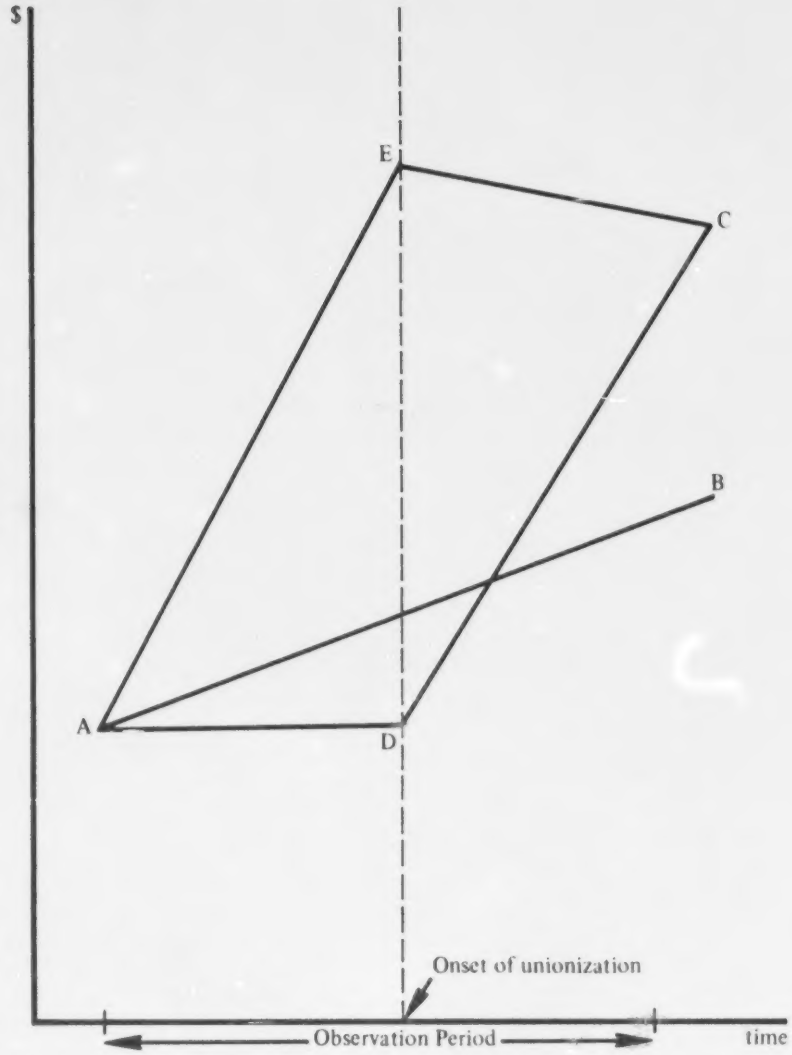
The evidence adduced by Birnbaum and Morgan/Kearney suggesting a positive relationship between faculty compensation growth and unionization is unconvincing. In this section, we address the Brown/Stone paper which found no general association between unionization and faculty compensation.[14] At issue is whether the Brown/Stone methodology has masked union effects thereby making their results equally unconvincing.

Table 7 presents the Brown/Stone results relating to post-unionization (initial contract) compensation growth at collective bargaining campuses. For each

Figure 1

POSSIBLE TIME PATHS OF AVERAGE COMPENSATION LEVELS:

BIRNBAUM AND MORGAN/KEARNEY



union campus in their study, the growth rate in compensation, by rank, over the campus's collective bargaining period (initial contract date to 1975-76) was computed. Similarly, the growth rate in the national average compensation, by rank, at schools of the same category was computed for the identical period. These national average growth rates were subtracted from the campus's to yield the campus's net growth rate by rank. The numbers in Table 7 are mean net growth rates for subsamples of union schools in the Brown/Stone study.

As indicated in Table 7, the five Pennsylvania campuses experienced unusually rapid compensation growth in the period following collective bargaining. The Merchant Marine Academy and the City University of New York campuses experienced unusually low compensation growth rates. These two subsamples clearly represent extremes. The bulk of unionized campuses in their study did not experience post-collective bargaining compensation growth significantly greater than that occurring nation-wide.

Under what circumstances would the Brown/Stone methodology and results effectively mask positive impacts of unionization? One such possibility would occur if the "quality" growth at unionized campuses, on average, was less than the nation-wide "quality" growth rate. In this event, the similarity between compensation growth rates at union campuses and national average compensation growth rates, as reported by Brown/Stone, would suggest positive union effects. Although Brown/Stone do not directly analyze this issue, the evidence presented in Table 5 would appear to make this an unlikely possibility.

Actual promotion patterns at union campuses may cause difficulty when using the methodology of comparing compensation levels, by rank, at union campuses to the national levels. To the extent that unionized campuses promote faster than the nation-wide promotion rate, average compensation in each rank may decline, *ceteris paribus*, even though the average level at the institution is rising. This is because promotion into higher ranks of higher paid faculty in lower ranks tends to reduce the average level in both the rank they leave and the rank they enter. This potential effect is, again, unlikely. Brown/Stone report that post-collective bargaining growth in the upper ranks was not unusually high at unionized campuses.

A more serious problem with the Brown/Stone methodology involves the possibility that compensation growth rates vary systematically between regions. In their sample of collective bargaining campuses, a large proportion are in the Middle Atlantic region. Even though compensation at unionized campuses may be increasing compared to the Middle Atlantic averages, the growth rate may be less than the national rates and no effects will appear. Brown/Stone note that, for the Middle Atlantic region, unionized campuses did not experience unusually high compensation growth. But they warn that this particular result is difficult to interpret because the union schools in the region constitute approximately 14 percent of the campuses included in the AAUP regional results.[15] Consequently, the union campuses are, in part, being compared to themselves.

To a lesser extent, this problem applies generally to the Brown/Stone results reported in Table 7. Because the unionized campuses are included in the computation of the national average compensation, they are, in some sense, being compared to themselves. This would tend, *ceteris paribus*, to bias the results in

favor of having no union effect appear. However, it is unlikely that this has had any serious impact on the Brown/Stone results. Since the unionized campuses in the Brown/Stone study represent approximately four percent of total campuses in the AAUP survey, they would have a minor effect on the national average. More importantly, as shown in Table 7, since the mean net compensation growth rates at 40 of the 45 union campuses are *negative*, their influence, if measurable, has been to *lower* the national average growth rate. Thus the results in Table 7 actually *understate* the *negative* difference between collective bargaining and noncollective bargaining compensation growth rates.

There is, however, the possibility that post-collective bargaining compensation growth rates at union schools may have been significantly different than the pre-collective bargaining rates but still not significantly different from the nationwide rates. Certainly, in this case, unionization would have been associated with differential compensation growth. In their original study, Brown/Stone present no evidence as to whether this occurred. The results in Table 8, however, suggest that unionized campuses did not, in general, experience unusual post-collective bargaining net growth rates when compared to their pre-union net growth rates. Although the mean differences are positive across the faculty ranks, only the assistant professor rank showed a significantly higher net compensation growth rate. These results should be interpreted with caution since five of the 21 campuses analyzed are the Pennsylvania campuses discussed previously.

General Criticism of Research on Faculty Unions

We have an indication of the general importance of a social phenomenon when widespread interest in its impacts leads to extensive empirical research. This is now beginning to be the case with the issue of collective bargaining's influences on higher education. Such studies, particularly those which yield conflicting results, must be subjected to critical assessment if we are to better understand the consequences of faculty unions. The importance of this review process in furthering our understanding is well known among researchers. It is to be hoped that the end result of this research "competition" is to secure general agreement on the methods and conclusions, or, at the least, to isolate the "differences" clearly and effectively.

There are, however, two additional kinds of criticisms that have been erroneously directed against empirical studies of collective bargaining's effects on higher education. Because these appear frequently, they require a brief comment. The first and most obviously irrelevant criticism is the kind ostensibly directed against the researchers' motives, although clearly the intent is to discredit the study's findings. For example, in describing the methods adopted by Birnbaum and Brown/Stone, Robert Nielsen claims, "The way this con game is played, you choose what you are going to compare, after you have selected a conclusion you want your comparison to lead to" and thus the results are "neither scientific nor scholarly and for the most part simply reflect the personal biases of their authors."[16]

In the marketplace of ideas, results are replaced by better results, not by claims of "sinister motives." Criticisms of this kind are not likely to dissuade

serious researchers from continuing their attempts to assess the influence of academic collective bargaining. Such criticisms may, however, by either ignorant or deliberate misstatements, create unnecessary confusion among interested observers of faculty unionism.

A different criticism directed against empirical analysis of faculty unions is concerned with the phenomenon itself. The essence of this criticism is that *no* empirical research on the influence of college unions can be meaningful because, for various reasons, this social phenomenon is not currently amenable to statistical inquiry. Numerous examples of this point of view are extant in the academic collective bargaining literature.

> . . . Because faculty bargaining is recent, limited in adoptions, specific to individual institutions and local conditions, it does not yet lend itself to the collections and quantification of substantial data, to be organized either as hard facts or attitudes in the language of the statistician or the behavioral scientist. . . . .
>
> . . . The record of faculty collective bargaining continues to sprawl to a virtually unmanageable degree and has refused to 'stay put' long enough for anyone to subject it to scrutiny by means of a truly scholarly apparatus.[16]
>
> At this moment the data are too sparse to permit econometric analysis of any sophistication to be undertaken for the four-year institutions. . . .
>
> Salary practices in institutions of higher education make it difficult to collect and analyze data to test the effect of unionization.[17]

Academic collective bargaining's potential for creating major changes in the structure of higher education, however, argues strongly that such studies be attempted. In fact, the existence of the three studies reviewed here belies the impossibility of meaningful empirical research in the area of academic unions.

Concluding Comments

The three papers analyzed in this critique concentrate primarily on the association between collective bargaining in higher education and faculty compensation. Future studies will, no doubt, extend the analysis to such areas as faculty teaching loads, availability of research and travel funding, impacts on "merit" criteria for promotion and retention, and faculty governance, to name only a few. The expansion of the analysis into these broader areas is crucial if the necessary information about the overall consequences of academic unionism is to be made available to the individuals vitally concerned with collective bargaining's growth in higher education–the faculty, administrators, trustees, and students.

The most pressing difficulty currently inhibiting such studies is not the resourcefulness of the researchers, but rather the general lack of data to incorporate into the analysis. To the extent that such data are forthcoming, more ambitious studies of collective bargaining's impacts on higher education will be attempted. Until these data are available, studies of faculty unions will concentrate on the narrower economic variables of salary and compensation.

A final caveat is essential. This paper represents an attempt to resolve the differing research results regarding the impact of academic unions on faculty compensation. To the extent that the Birnbaum and Morgan/Kearney papers, which yielded *positive* associations between faculty unions and compensation, were shown to have incompletely controlled for variables which may have

accounted for their observed findings, the resolution would appear to be complete. That is, there would appear to be no strong evidence in the Birnbaum and Morgan/Kearney studies that gains in faculty compensation are uniquely associated with the adoption of collective bargaining by college and university faculty. This is consistent with the Brown/Stone findings which directly show that unionization has not been associated with significant increases in faculty compensation levels.[19] While this does not prove that unions have no effects, it does suggest that there is simply no convincing evidence that faculty collective bargaining has generally affected faculty compensation.

TABLE 1

AVERAGE COMPENSATION AND GROWTH RATES COMPUTED FROM BIRNBAUM* AND MORGAN/KEARNEY**

Group	Birnbaum (group N=50)				Morgan/Kearney (group N=46)			
	1968–1969	1974–1975	Difference	Growth Rate	1969–1970	1974–1975	Difference	Growth Rate
CB Campuses	$12,600	$20,000	$7,400	8.0%	$12,900	$18,500	$5,600	7.4%
Matched Non CB Campuses	$12,600	$18,500	$5,900	6.6%	$13,100	$17,900	$4,800	6.4%
Difference	$ 0	$ 1,500	$1,500	1.4%	$ −200	$ 600	$ 800	1.0%

* Birnbaum (2); corrected Table 1. Numbers are weighted averages of results reported for universities, four-year colleges, and independent colleges and universities.

** Morgan/Kearney (9); Table 1.

TABLE 2

REGIONAL DISTRIBUTIONS OF UNION AND NONUNIONIZED CAMPUSES IN BIRNBAUM AND MORGAN/KEARNEY

Region	Birnbaum		Morgan/Kearney	
	Union	Non-Union	Union	Non-Union
West	.04	.40	.04	.20
North Central	.08	.14	.19	.26
North East	.86	.22	.72	.50
South	.02	.24	.04	.04

TABLE 3

AVERAGE COMPENSATION LEVELS ASSOCIATED WITH THE UNION AND NONUNION REGIONAL DISTRIBUTIONS*

Group	Birnbaum				Morgan/Kearney			
	1968–1969	1974–1975	Difference	Growth Rate	1969–1970	1974–1975	Difference	Growth Rate
CB Regional Distribution	$13,300	$19,900	$6,600	6.9%	$14,000	$18,900	$4,900	6.2%
Non CB Regional Distribution	$12,900	$19,000	$6,100	6.7%	$13,900	$18,800	$4,900	6.2%
Difference	$ 400	$ 900	$ 500	0.2%	$ 100	$ 100	$ 0	0.0%

* Based on average compensation by region and category reported in various AAUP Bulletins.

TABLE 4

REGRESSION COEFFICIENTS FROM MORGAN/KEARNEY**

Independent Variables	Dependent Variable					
	(1) Average Compensation 1969-70		(2) Average Compensation 1974-75		(3) Percent Change Compensation 1969-70 to 1974-75	
	Coefficient	Order Entered	Coefficient	Order Entered	Coefficient	Order Entered
Quality Rating	16.6*	1	18.7*	1	– .04*	4
Compensation %'s '64-'69	5.5*	2	3.1*	6	– .04*	2
Public/ Private	1238.5*	3	1506.1*	3	–1.60	6
Per. Cap. Income	1.2*	4	2.4*	2	.01*	3
State Percent Union Membership	3.8*	5	9.0*	4	.03	5
Union/ Nonunion	12.3	6	1044.7*	5	8.60*	1
R^2	.85		.73		.34	

*Indicates variable generated a statistically significant increase in R^2 at the .05 level.
**Morgan/Kearney (9; Table 5).

TABLE 5

AVERAGE NUMBER OF PROFESSIONAL ACCREDITATIONS

FOR MORGAN/KEARNEY CAMPUSES*

Group	1969-70	1974-75	Percent Change '69-'70 to '74-'75
CB Campuses	4.59	6.27	37%
Non CB Campuses	5.50	6.81	24%

*Compiled from *Accredited Institutions of Higher Education*, 1969-70 and 1974-75, published for the Federation of Regional Accrediting Commissions of Higher Education by The American Council on Education, One Dupont Circle, Washington, D. C. The SUNY campuses and their matching institutions were excluded.

TABLE 6

TIME DISTRIBUTION OF EFFECTIVE CONTRACT DATES

FOR UNION CAMPUSES IN BIRNBAUM AND MORGAN/KEARNEY*

Study	Year of Initial Contract						
	70-71	71-72	72-73	73-74	74-75	75-Later	No Info.
Birnbaum	3	28	6	4	1	2	6
Morgan/ Kearney	4	8	8	8	7	10	0

*Compiled from contract dates provided by the National Center for the Study of Collective Bargaining in Higher Education.

TABLE 7

MEAN POST-COLLECTIVE BARGAINING
NET COMPENSATION GROWTH RATES***

Subsample	Rank			
	Full	Associate	Assistant	Instructor
32 Campuses	−0.00026	−0.00216	−0.00345	−0.00532
5 Pennsylvania Campuses	0.04770*	0.04235*	0.04065*	0.03245*
Merchant Marine Academy and 7 CUNY Campuses**	−0.02185*	−0.01831*	−0.01824*	−0.01870*

*Significant at a .05 level.

**For this subsample, table entries are post-1970-71 growth rates. Each of these eight campuses initiated bargaining in 1968-69 but data prior to 1970-71 was not available.

***Brown/Stone (3; pp. 21, 23, 25).

TABLE 8

DIFFERENCES BETWEEN POST-UNION AND PRE-UNION
NET COMPENSATION GROWTH RATES** (21 CAMPUSES)

	Rank			
	Full	Associate	Assistant	Instructor
Mean	.004	.009	.027	.017
Standard Deviation	.040	.038	.024	.040
t-value	.460	1.090	5.160*	1.950

*Significant at a .05 level.

**For campuses with effective contract dates from 1972-73 to 1975-76.

Footnotes

[1]See, for example, the widely differing conclusions reached by Garbarino [6; p. 171, 258] and Kemerer and Baldridge [7; p. 208].

[2]A notable exception to this general statement was Robert Birnbaum's initial paper, Birnbaum [1].

[3]Garbarino [6; p. 170].

[4]Birnbaum [2], Morgan and Kearney [9] and Brown and Stone [3]. Birnbaum [2] modifies, extends and updates his earlier work, Birnbaum [1]. Consequently our commentary, unless noted otherwise, refers to the later paper. For comparability purposes, only these studies' results for faculty compensation at four-year colleges and universities will be analyzed.

[5]Birnbaum [2; 117,116]. These conclusions are "weaker" than those of his earlier paper where he found that analysis "of changes in compensation levels in 88 pairs of matched institutions during the period between 1968-69 and 1972-73 indicates *significantly greater increases in institutions engaged in collective bargaining* as of the spring of 1973." Birnbaum [1; p. 91, italics added].

[6]Morgan and Kearney [9; p. 13, italics added].

[7]Brown and Stone [3; p. 14, italics added].

[8]In a recent survey of the economics of unionism, George E. Johnson notes, ". . . While little progress has been made in modeling the behavior of trade unions–their objectives and the role of the bargaining process–there has been a great deal of sound empirical work on the economic effects of unionism." [8, p. 27].

[9]Birnbaum [2; p. 116].

[10]Morgan and Kearney [9; p. 4]. They also state that "the AAUP compensation scale on which our matches were made was based on how well faculty compensation increases compare with the national growth in annual percapita personal income." [p. 5] The precise operational content of this criterion is unclear.

[11]Adjusted, of course, by category.

[12]Morgan and Kearney [9, p. 10].

[13]The simple correlation coeffecient between percent changes in compensation for the two periods is -.78 and significant.

[14]Brown and Stone address several other issues–preunion levels, post-union promotions and interrank salary variation. No significant post-union effects were found.

[15]Brown and Stone [3; footnotes 7 and 8, p. 16].

[16]Nielsen [10].

[17]Carr and Van Eyck [4; p. x, xi].

[18]Garbarino [6; p. 169, 170].

[19]These results hold, *a fortiori*, when union dues are subtracted from the gross compensation levels. These typically range from $75 to more than $150 per year. See Finkin *et al.* [5; p. 125].

References

1. Birnbaum, Robert, "Unionization and Faculty Compensation," *Educational Record*, Winter 1974, pages 29-33, reprinted in *Collective Bargaining in Higher Education*, Proceedings, Second Annual Conference, April 1974, National Center for the Study of Collective Bargaining in Higher Education, pages 83-96.
2. _____, "Unionization and Faculty Compensation: Part II," *Educational Record*, Spring 1976, 57, No. 2, pages 116-118.
3. Brown, William W. and Courtenay C. Stone, "Academic Unions in Higher Education: Impacts on Faculty Salary, Compensation, and Promotions," CSUN Economics Working Paper No. 76005, revised November 1976, forthcoming in *Economic Inquiry*.
4. Carr, Robert K. and Daniel K. Van Eyck, *Collective Bargaining Comes to Campus*, American Council on Education, 1973.
5. Finkin, Matthew W., Robert A. Goldstein, and Woodley B. Osborne, *A Primer on Collective Bargaining for College and University Faculty*, American Association of University Professors, 1975.
6. Garbarino, Joseph W., *Faculty Bargaining: Change and Conflict*, McGraw-Hill Book Co., 1975.
7. Kemerer, Frank R. and J. Victor Baldridge, *Unions on Campus*, Jossey-Bass Publishers, 1975.
8. Johnson, George E., "Economic Analysis of Trade Unionism," *American Economic Review*, 65, No. 2, May 1975, pages 23-28.
9. Morgan, David R. and Richard C. Kearney, "Collective Bargaining and Faculty Compensation: A Comparative Analysis," mimeographed paper, forthcoming in *Sociology of Education*.
10. Nielsen, Robert, "The CB Debate: A Scholarly Numbers Game," *American Teacher*, January 1977.

XIII. NOTES ON RECENT LEGISLATIVE, ADMINISTRATIVE AND JUDICIAL DEVELOPMENTS

June M. Weisberger

University of Wisconsin Law School

I. New state legislation:

The effort continues but no new legislation yet. California, Ohio, Washington, and Wisconsin may be next. Some chance for passage of bills in Colorado, Illinois, Indiana, and Missouri. (See *Chronicle of Higher Education*, March 14, 1977)

II. Federal legislation is not completely dead:
Some experts argue that some congressional power to legislate collective bargaining for state and municipal employees remains in the wake of *National League of Cities v. Usery*, 426 U.S. 833 (1976).* NEA and AFT support proposals for federal legislation although they continue to disagree on contents.

III. Administrative and judicial decisions relating to faculty collective bargaining in higher education:

A. For collective bargaining purposes, what is a private institution of higher education and what is a public institution?

1. The N.L.R.B. has asserted jurisdiction over a university where the university is not a political subdivision of the state and where it is completely independent from state control in regards to administration and personnel matters and decisions. (*Howard Univ.*, 224 N.L.R.B. No. 44 92 L.R.R.M. 1249 (1976); *Univ. of Vermont*, 223 N.L.R.B. No. 46, 91 L.R.R.M. 1570 (1976)).
2. See *Temple Univ.*, 194 N.L.R.B. 1160, 79 L.R.R.M. 1196 (1972) for a list of criteria distinguishing a public university.

B. Recent N.L.R.B. unit determination issues: where the action still is.

1. Who is a managerial employee?
   a. Fulltime faculty members are not managerial employees since the final authority for personnel affairs does not rest with faculty, nor do faculty committees advocate management's interests. (*Fairleigh Dickinson Univ.*, 227 N.L.R.B. No. 40, 94 L.R.R.M. 1044 (1976))
   b. Faculty are not managerial where their role in collegial decision making is on a collective, not individual, basis, and is exercised in faculty's own interest. (*Yeshiva Univ.*, 221 N.L.R.B. No. 169, 91 L.R.R.M. 1017 (1975))
   c. Fulltime faculty are not managerial employees since their man-

*With some exceptions, the cases cited in this outline have been reported from January 1, 1976 until March 15, 1977 in the Bureau of National Affairs' *Government Employee Relations Report* and the *Labor Relations Reporter*.

agement-type functions are not undertaken on behalf of the employer. (*New York Univ.*, 221 N.L.R.B. No. 176, 91 L.R.R.M. 1165 (1975))

2. Should law and medical school faculty be included in general faculty unit?
   a. Where prior board ruling concluded that either separate units or overall unit would be appropriate depending on the desires of the law school faculty, and a labor organization was selected to represent separately the law school faculty, a faculty unit excluding the law school is not inappropriate. (*New York Univ.*, 221 N.L.R.B. 176, 91 L.R.R.M. 1165 (1975))
   b. Medical school faculty are excluded from the general faculty unit since the medical school operates on a full year basis, has a low student-teacher ratio, obtains funds from non-university sources and its faculty receive higher salaries. (*Univ. of Vermont*, 223 N.L.R.B. No. 46, 91 L.R.R.M. 1570 (1976))
3. Should librarians be included in general faculty unit?
   a. Since professional librarians are a closely allied professional group which furthers the educational goals of the university they are included with the full-time faculty unit. (*Univ. of Vermont*, supra)
   b. A unit limited to professional librarians is appropriate where the library is a separate division of the college and the interests and treatment of the librarians differ from those of the faculty. The board included librarians in past cases where it found no valid basis for exclusion. (*Teachers College, Columvia Univ.*, 226 N.L.R.B. No. 193, 93 L.R.R.M. 1481 (1976))
   c. Professional librarians whose supervisory duties require 50% or more of their time are excluded from the faculty unit; however, where the evidence produced a conflict in testimony as to the amount of time spent on supervisory duties, the Board permitted two librarians to vote subject to challenge. (*New York Univ.*, supra)
4. Should other groups of professionals be included in the general faculty unit?
   a. Since the registered nurses employed as faculty members at the school of nursing share a broader community of interest with the non-faculty nursing staff, both should be included in the same unit. (*Jersey Shore Medical Center* 225 N.L.R.B. No. 162, 93 L.R.R.M. 1133 (1976))
   b. Other groups included in faculty unit are: faculty of school of allied health sciences, research associates, agricultural extension specialists (*Univ. of Vermont*, supra), directors of various schools who have no supervisory authority, and principal investigators. (*New York Univ.*, supra).

5. Who is a supervisor?

   a. Chairpersons are not supervisors, and therefore included in the faculty unit, where they act as instruments of the faculty and where their major recommendations are made on a collegial basis. (*Yeshiva Univ.*, supra)

   b. In a unit clarification proceeding, chairpersons were accreted to the general faculty unit since the collective bargaining agreement changed the chairpersons' duties such that all their recommendations are preliminary or advisory only with final authority in the vice president. (*Fairleigh Dickinson Univ.* supra. In an earlier case the Board had found the chairpersons supervisory employees, *Fairleigh Dickinson*, 205 N.L.R.B. 673, 84 L.R.R.M. 1033 (1973))

   c. Department chairpersons are excluded from the faculty unit where they make effective recommendations in promotions and tenure, assign schedules, and evaluate faculty. (*Univ. of Vermont New York Univ.* supra)

6. Should part-time employees be included in the same unit as full-time employees?

   a. For reasons set forth in earlier decisions (*New York Univ.* 83 L.R.R.M. 1549 (1973) and *Univ. of San Francisco*, 84 L.R.R.M. 1403 (1973)) part-time faculty are not included in the full-time faculty unit. (*Yeshiva Univ., Univ. of Vermont*, supra) Reasons include differences in compensation, lack of participation in university government, ineligibility for tenure, and others.)

   b. Faculty members on terminal contracts share the same community of interest while they continue their employment and thus are included in the full-time faculty unit. (*New York Univ. Univ. of Vermont, Yeshiva Univ.*, supra)

7. Should members of religious orders who are faculty be included in the general faculty unit?

   a. Where the faculty unit is satisfied that a community of interest exists between themselves and four nuns, and their religious order no longer administers the college, no statutory provisions precludes the nuns' inclusion in the general faculty unit. (*D'Youville College*, 225 N.L.R.B. No. 104, 92 L.L.R.M. 1578 (1976))

   b. Vows of poverty and obedience do not affect unit placement; and although the religious are not in the retirement and tenure system, they still share a community of interest for collective bargaining purposes with the faculty unit. (*Niagara Univ.*, 227 N.L.R.B. No. 33, 94 L.R.R.M. 1001 (1976).

8. Are students covered employees under the N.L.R.A.?

   a. Residents, interns and clinical fellows are not covered employees. They are primarily engaged in educational training; the relation-

ship is educational rather than employment related. (*Cedars-Sinai-Medical Center*, 223 N.L.R.B. No. 57, 91 L.R.R.M. 1398 (1976))

b. In a subsequent series of cases, the Board without discussion, applied its *Cedars-Sinai* holding that residents, interns and clinical fellows are not covered employees. (*St. Christopher's Hospital*, 223 N.L.R.B. No. 58, 91 L.R.R.M. 1417 (1976), *St. Clare's Hospital*, 223 N.L.R.B. No. 163, 92 L.R.R.M. 1001 (1976), *Barnes Hospital*, 224 N.L.R.B. No. 83, 92 L.R.R.M. 1367 (1976), *Wayne State University*, 226 N.L.R.B. No. 168, 93 L.R.R.M. 1424 (1976))

c. In a case dealing with residents and interns the Board stated that the not-for-profit hospital was not an employer within the act. A New York Supreme Court and a federal district court (Southern District, New York) interpreted this language to permit the state labor board to assert jurisdiction over residents and interns. (See below C(1)(b)) The NLRB then issued a revised decision, retracting the "non-employer" language, making it clear that the NLRB has preempted state jurisdiction over residents and interns. (*Kansas City General Hospital* 225 N.L.R.B. No.14, 92 L.R.R.M. 1379 (1976), 225 N.L.R.B. No. 14a, G.E.R.R. 684: E-1 (1976)) The Board also held that psychology interns employment is incidental to the educational objectives and therefore they are not covered employees. (*Clark Couty Mental Health Center*, 225 N.L.R.B. No. 105, 92 L.R.R.M. 1545 (1976))

C. Court Review of Unit Determination Issues in the Private Sector: More Residents and Interns Litigation.

1. Will the courts defer to the NLRB rulings?

a. *Pennsylvania* – the court refuses to assert state jurisdiction over residents and interns at a private, not-for-profit hospital since they are not employed for the primary purpose of remuneration but to fulfill educational requirements and since there is no continuous relationship. (*Philadelphia Ass'n of Interns and Residents v. Albert Einstein Medical Center*, Penn. Sup. Ct., 92 L.R.R.M. 3410 (July 6, 1976))

b. *New York* – The state retains the jurisdiction it had over interns and residents prior to the 1974 amendments to the NLRA. The court follows the first *Kansas City* decision cited above at B(8)(c). (*Committee of Interns and Residents v. New York State Labor Relations Board*, 388 N.Y.S. 2d 509, 94 L.R.R.M. 2081 (Supt. Ct. New York Co., Oct. 14, 1976)

c. *Federal Court Decisions*

i. The employer may not invervene in a federal court action by the NLRB to enjoin assertion of state jurisdiction over interns and residents (*NLRB v. Committee of Interns and Resi-*

dents, 94 L.R.R.M. 2605 (December 13, 1976) U.S. Dist. Ct. (S.D.N.Y.))

ii. The N.L.R.A. does not pre-empt state jurisdiction over interns and residents since no national policy requires them to be unregulated and the NLRB has determined them not covered employees under the N.L.R.A. (*NLRB v. Committee of Interns and Residents*, 29 L.R.R.M. 2739 (January 31, 1977) U.S. Dist. Ct. (S.D.N.Y.))

D. Recent State Administrative Agency Unit Determination Issues: More Action in the Public Sector.

1. Multi-campus v. single-campus units?

a. Statewide unit of faculty is appropriate where there is a community of interest and the statute requires that units be as large as reasonable. (*Order No. 25, Representation Petition by Associated Faculty, NEA*, Alaska Labor Relations Agency (1976) G.E.R.R. 693:25)

b. State wide bargaining units are appropriate for all state employees; reasons include legislative intent and the central role of the governor. (*State of Iowa and all Petitioners*, Iowa Public Employee Relations Board, (Jan 8, 1976) G.E.R.R. 647:B-17)

c. Separate campus units are appropriate especially when some campuses already have separate collective bargaining organizations, among other factors. (*Univ. of Minnesota*, Minnesota Public Employee Relations Board, Case Nos. 73-PR-571A, 74-PR-59A, 74-PR-66-A, 74-PR-93-A (1975), G.E.R.R. 639: B-15)

2. Should law and medical school faculty be included in the general faculty unit?

a. The specialized community of interest of doctors and lawyers, of which outside income is a factor, separates the medical and law school faculties from the general faculty unit, so that the medical and law school should each comprise a separate unit. (*University of Pittsburgh*, Pennsylvania Labor Board, (1976), G.E.R.R. 648: B-10)

3. Should other groups of professionals be included in the general faculty unit?

a. Librarians and coaches are included in faculty unit. (*Bd. of Trustees and Amherst and Boston Chapters AAUP*, Massachusetts Labor Relations Commission, Case Nos. SCR-2079, SCR 2082 (1976), G.E.R.R. 686: B-9

b. Paraprofessional positions are excluded from the faculty unit. (*Blackhawk VTAE Dist. No. 5*, Wisconsin Employment Relations Commission Case XIV, No. 18919, ME 1167, Dec. 13460-A (1975), G.E.R.R. 645: C-4)

4. Who is a supervisor?
    a. Program heads are excluded from faculty unit since they are the first step in the supervisory chain. (*Metropolitan Technical Community College Education Ass'n*, Nebraska Court of Industrial Relations (1976), G.E.R.R. 680: C-5)
    b. Department chairpersons are supervisors and excluded from the faculty unit when they assign work, supervise employees, and exercise independent judgment. (*Clatsop Community College*, Oregon Employment Relations Bd, Case No. C-197-75 (1976), G.E.R.R. 680: C-6)
    c. When administrative duties of the department chairpersons are of a routine and clerical nature requiring little independent judgment, the chairpersons are included in the faculty unit. (*Clatsop Community College*, supra)
    d. Department chairpersons are included in the faculty unit since administrative authority is distributed among the faculty. (*Bd. of Trustees, and Amherst*, supra)
5. Should part-time faculty be included in the same unit as full-time faculty?
    a. Part-time faculty included. (*Bd. of Trustees, and Amherst*, supra)
    b. Part-time faculty of university, medical, law and Health Professions are included in the respective units. (*Univ. of Pittsburgh*, supra)
    c. System contract ratification and elections of an executive board and bargaining team giving part-time faculty a weighted vote of only 20% is in violation of the duty of fair representation. (*Wayne Co. Community College*, Michigan Employment Relations Commission, Case No. CU 74J-29 (1976) G.E.R.R. 656: B-4)
6. Are students public employees for collective bargaining purposes?
    a. Students working part time for university are public employees since the unit of students working out of the school's employment office in clerical, technical and maintenance jobs is an identifiable work force whose employment is not casual or temporary. (*Michigan State Univ.*, Michigan Employment Relations Commission, Case No. R75-D-197, G.E.R.R. 647: B-13 (1976)
    b. Interns and residents are public employees since they deliver essential medical services. NLRB decisions in this area are not controlling. (*City of Cambridge and Cambridge House Officers Ass'n*, Massachusetts Labor Relations Commission (April 29, 1976) G.E.R.R. 658: B-1)

E. Court Review of Unit Determination Issues in the Public Sector: Another Forum for the Residents and Interns Debate
    1. Pennsylvania – Interns and residents are not public employees be-

cause they are not employees for the primary purpose of remuneration, but to fulfill educational requirements. (*Philadelphia Ass'n of Interns and Residents v. Temple University*, Pennsylvania Sup. Ct. July 6, 1976, 92 L.R.R.M. 3410)

2. *Federal Court Decisions* – petition for removal of case involving bargaining rights of interns and residents was improperly granted because there is no claim arising out of federal law; case remanded to state court. (*Committee of Interns and Residents v. New York State Labor Relations Board and Misericordia Hospital*, 420 F. Supp. 826 (S.D.N.Y. 1976), 93 L.R.R.M. 2540)

F. N.L.R.A. Scope of Bargaining Issues: the Next Battleground

1. An 8(a)(5) complaint should be issued against a university for dealing with the faculty Senate on mandatory subjects of bargaining instead of fulfilling its statutory obligation to deal exclusively with the statutory representative of the faculty. Issues included academic calendar and "governances" included in a faculty policy manual. Issues such as tenure and promotion are clearly mandatory. (91 L.R.R.M. 12 (1976))

2. Union proposals to incorporate into the collective bargaining contract statements on governance and certain collegial decision making processes are not mandatory subjects of bargaining since they concerned managerial rights. (1975 Labor Relations Yearbook 273, reporting general counsel's rulings on complaints query) If Union insisted upon inclusion of these items in contract, it would be a refusal to bargain in violation of the N.L.R.A.

G. Public Sector Administrative Agency Scope of Bargaining and Duty to Bargain Issues: Second Generation Problems Are Beginning to Develop

1. What is the relationship of collegiality, administrative authority, and collective bargaining?

   a. Although the collegial system delegates some broad managerial functions to the faculty, collective negotiations contemplate mandatory negotiations of grievances and terms and conditions of employment; e.g., procedures in selecting department chairmen, scope of university wide tenure, effect of academic calendar on terms and conditions of employment. Since managerial decisions may be taken unilaterally, the university is not required to negotiate, among others, proposals of a faculty role in formulating budget items that have an impact on terms and conditions of employment. (*Rutgers University*, New Jersey Public Employment Relations Commission, No. 7C-13 (Jan. 23, 1976), G.E.R.R. 645: E-1)

   b. Board of Trustees may unilaterally adopt a new policy regarding preferred teacher evaluation procedures especially since these procedures were developed through the traditional governance processes. (*Central Michigan Univ.*, Michigan Employment Re-

lations Commission Case No. C74-A-19, (Jan. 30, 1976) G.E.R.R. 646: B-15, emphasizing differences between institutions of higher education and other governmental entities)

c. Mutual responsibility for quality of education language, faculty determination of evaluation system are permissive subjects of bargaining. (*Orange County Community College*, New York PERB, Case No. U-2137, 9-3068 (Sept. 24, 1976))

d. Minutes of student contact time is an educational judgment and a permissive subject of bargaining. Nonetheless, the impact of any change on the terms and conditions of employment is a mandatory subject of bargaining. (*Stockton State College*, New Jersey PERC No. SN-16-CO-76-11 (Jan. 1977), G.E.R.R. 698:18)

e. Criteria for promotion, written reasons for denial of tenure are mandatory subjects of bargaining. (*Orange County Community College*, supra)

2. What are some items of mandatory negotiations?

a. Severance pay, copyrights, holidays and merit pay plans are mandatory subjects of bargaining. (*Area IV Community College*, Iowa PERB Case Nos. 663 & 674 (1976))

b. Conduct of union business on employer property. (*Community College*, supra)

H. Judicial Decisions Related to Administration of the Higher Education Collective Bargaining Agreements in the Public Sector: Role of Grievance Arbitration

1. Which disputes are subject to arbitration?

a. Procedures used in determination of personnel decisions and limitations of president's authority by the collective bargaining agreement are arbitrable, however the merits of personnel issues are not. (*Lincoln Univ.*, 354 A. 2d 576 (Pa. 1976) 92 L.R.R.M. 2522)

b. The effect on tenure of a termination contract extending one year beyond the probationary period is arbitrable. (*Ferris State College*, 249 N.W. 2d 375, 94 L.R.R.M. 256 (1976))

c. Failure to follow non-renewal procedure is not arbitrable since the Board of Trustee's duties in appointing teachers are non-delegable. (*Bd. of Trustees of Jr. College Dist.* 62 Ill. 2d 470, 343 N. E. 2d 473, 92 L.R.R.M. 2380 (1976), rehearing denied, but note there is no Ill. statute governing public employee bargaining rights)

d. A school board may not agree to a just cause provision for probationary teachers since that would place the merits of a tenure decision subject to arbitration. (*Cohoes School Dist.*, 40 N.Y. 2d 774, 358 N. E. 2d 878, 94 L.R.R.M. 2192 (1976); although this

is a public school case, it is a key New York decision on scope of bargaining)

2. What remedial powers does an arbitrator possess?
   a. Where a procedural defect in non-renewal occurred, award of an additional year of employment is appropriate. (*Simon v. Boyer*, 380 N.Y.S. 2d 178, 92 L.R.R.M. 3055 (Feb. 24, 1976))
   b. Back pay may be awarded where board of trustees failed to distribute summer school work pursuant to a collective bargaining contract; this does not constitute illegal use of public funds. (*Bd. of Trustees of Jr. College Dist.*, supra)
3. Does grievance arbitration require disclosure of confidential evaluations?
   a. In a discrimination grievance, the arbitrator properly refused to direct a faculty witness to reveal confidential promotion committee discussions where a written Board policy and the contract mandated confidentiality. (*Professional Staff Congress/CUNY v. Bd. of Higher Ed.*, 39 N.Y. 2d 319, 347 N. E. 2d 919, 92 L.R.R.M. 2835 (1976))

I. Other Issues Relating to the Collective Bargaining Relationship
   1. Sunshine Laws
      a. Sunshine Law does not apply to informal meetings between junior college president and employee council in which working conditions were dicussed. This was only fact-finding. (*Bennett v. Warden*, Fla. Dist. Ct. App. (1976), G.E.R.R. 667: B-13)
   2. Access to Public Records
      a. Florida Records act compels college to disclose to union names of employees and budget working paper since any citizen has a right to see these public documents. (*Warden v. Bennett*, 340 So. 2d 977 (Fla. App. 1976, 94 L.R.R.M. 2383))
      b. Under the federal Freedom of Information Act, the N.L.R.B. must make available to the employer documents received by or in possession of the N.L.R.B. if the court finds nothing in the files to compromise the board's position. (*Trustees of Boston Univ.*, 93 L.R.R.M. 2413(D.C. Mass. 1976) (Board is temporarily enjoined from proceeding with unfair labor practice hearings)
   3. Interference with Protected Union Activities
      a. Where concerted activities protected under Section 7 of the N.L.R.A. played a substantial part in decision to dismiss, the university is ordered to reinstate dismissed employee to her former position. (*Trustees of Boston Univ.*, 224 N.L.R.B. No. 179, 93 L.R.R.M. 1450 (D.C. Mass. 1976), affirmed 94 L.R.R.M. 2500 (1st Cir. 1977)

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Dr. Theodore H. Lang, Professor of Education and former Director of Graduate Programs in Educational Administration, was named Director of The National Center July 1, 1976. Prior to coming to Baruch in 1971, he served as Deputy Superintendent of Schools for Personnel of the New York City Department of Education and before that was Personnel Director of the City of New York and Chairman of the City Civil Service Commission.

Dr. Lang has been active in the field of labor relations in government and public education and is a member of the AAA panel. Since assuming his position at Baruch, Dr. Lang has been active in establishing a program for the training of inner city school administrators.

Dr. Lang received his B.S. degree in 1936 from the City College, his M.S. in 1938 from the City College, his M.P.A. in 1942 from New York University and his Ph.D. in 1951 from New York University.

Dr. Aaron Levenstein, Professor of Management, has taught at the University of California, Cornell University, New York University, and the New School for Social Research. Dr. Levenstein has written and lectured extensively in the area of labor relations and has also served as consultant to various national organizations and public agencies. He is Associate Director of the National Center and edits its *Newsletter*.

Professor Levenstein received his B.A. degree in 1930 from the City College and a J.D. in 1934 from New York Law School.

Dr. Sidney I. Lirtzman is Acting Vice-President for Academic Affairs and Professor of Management at Baruch College. He is executive officer of the City University's Ph.D. program in business. He has served as a consultant to a variety of business and public sector organizations including the New York Times, the U. S. Maritime Commission, and the New York State Division of Alcoholism and Drugs.

Dr. Lirtzman received his B.S. (1951) from the City College of New York, and his M.A. (1952) and his Ph.D. (1955) from Columbia University.

Dr. Julius J. Manson, Professor Emeritus of Management and former Dean of the School of Business and Public Administration, has taught at Columbia University, New York University, the New School for Social Research, Cornell University and Rutgers University. He has a long and distinguished record in the field of labor-management relations both in the United States and abroad as a recognized authority.

Dr. Manson received his B.A. (1931) and M.A. degrees (1932) from Columbia University, a J.D. degree (1936) from Brooklyn Law School and his Ph.D. (1955) from Columbia University.

Bernard Mintz, former Acting President of Baruch College, served as Vice-Chancellor for Business Affairs in the Central Administration of the City University and, until March 1972, Vice-Chancellor for Administration. His positions in the City University's central administration entailed responsibilities for all aspects of personnel and labor relations for both academic and

non-academic staffs and university budget and business administration. Since 1977 he is serving as Executive Assistant to the President, William Paterson College of New Jersey.

He received his B.S.S. degree in 1934 from the City College, and his M.A. in 1938 from Columbia University.

Dr. Samuel Ranhand, Professor of Management and former Chairman of the Department of Management, has been active as a consultant in the areas of management and labor relations and is a practicing arbitrator on the panel of the American Arbitration Association. He is also a mediator with particular emphasis in the education field.

Dr. Ranhand received his B.B.A. degree in 1940 from the City College, his M.B.A. in 1954 from New York University, and his Ph.D. in 1958 from New York University.

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